

OFFICIAL INFORMATIONCONFIDENTIAL**EVIDENCE CODE SECTION 1040
INTRADEPARTMENTAL CORRESPONDENCE**

DATE: January 9, 2020

TO: Honorable Board of Police Commissioners

FROM: Inspector General

SUBJECT: LAW ENFORCEMENT-RELATED INJURY 006-19 FOR 1/14/20
CLOSED-SESSION AGENDA

<u>Division</u>	<u>Date</u>	<u>Time</u>	<u>Duty-On (X) Off ()</u>	<u>Uniform-Yes (X) No ()</u>
Central	2/26/19	12:06 p.m.		

<u>Officer(s) Involved in Use of Force</u>	<u>Length of Service</u>
Bermudez, L./PO II	3 years, 2 months
Lopez, N./PO II	3 years, 2 months
Nunley, P./PO II	3 years, 1 month
Acevedo, F./PO II	3 years, 1 month
Monteagudo, E./PO II	2 years, 8 months

Total Involved Officer(s)

2 x Sgt. I
6 x PO II

<u>Suspect</u>	<u>Deceased ()</u>	<u>Wounded (X)</u>	<u>Non-Hit ()</u>
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Kenneth Lawrence Sylvas: Male, Native American, 68 years old.

COP Recommendations

Tactics – Administrative Disapproval, Sergeant Hurtado. Tactical Debrief, Sergeant Fuentes, along with Officers Acevedo, Bermudez, Gelvin, Lopez, Monteagudo and Nunley.

Drawing/Exhibiting – In Policy, No Further Action, Officers Gelvin, Lopez and Monteagudo.

Non-Lethal Use of Force – In Policy, No Further Action, Officers Acevedo, Bermudez, Lopez, Monteagudo and Nunley.

Less-Lethal Use of Force – In Policy, No Further Action, Officers Bermudez and Monteagudo.

IG Recommendations

Tactics – Same as COP.

Drawing/Exhibiting – Same as COP.

Non-Lethal Use of Force – Same as COP.

Less-Lethal Use of Force – Same as COP.

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INVESTIGATION

Annotated Force Investigation Division (FID) Incident Summary¹

Synopsis: Central Division uniformed officers responded to a radio call of a male Hispanic armed with a knife. Officers located the suspect, who armed himself with a folding knife and began threatening officers. In an effort to subdue the suspect, officers discharged less-lethal munitions at the suspect, which later resulted in the suspect's admittance to the hospital for injuries resulting from the use of force.

Investigative Summary

On February 26, 2019, Witness Sofia Gomez Robles was working at Jacky's Restaurant at 310 West Fifth Street in Los Angeles, when she came in contact with a patron in the restaurant, later identified as Suspect Kenneth Sylvas, who smelled of urine. Robles, who was standing behind the counter, asked Sylvas to take his food and leave the restaurant, so as not to disturb the other customers inside the restaurant. Robles also informed Sylvas that she would summon security if he did not leave. Sylvas refused to leave and told her to call whomever she wanted. Sylvas then removed a knife from his right waist area and showed it to her. Robles added that Sylvas never verbally threatened her.

A short time later, Victim Rocio Martinez entered Jacky's Restaurant. While in the restaurant, Martinez noticed a horrible smell but could not determine the origin. Martinez asked a restaurant worker she believed to be the owner, Witness Maria Cosio, if the was smell coming from the sewer or from the homeless man seated in front of her. Cosio informed Martinez that it was coming from Sylvas. Cosio added that Sylvas had been asked to leave the restaurant but refused. Martinez decided to approach Sylvas and asked him to leave. Sylvas did not respond to Martinez's request and did not make eye contact, so she returned to her seat. According to Martinez, approximately one minute later, while still seated at a table, Sylvas removed a knife from his right pants pocket and stated, "throat." Martinez recalled, "I was like, oh, God, no; I hope this guy doesn't just cut my throat."² Martinez felt if she tried to exit past Sylvas, he would cut her, so she waited for Sylvas to put the knife away before she exited the location. Martinez then telephoned 911 and reported the incident and spoke with a Communications Division (CD) Emergency Board Operator (EBO).

Note: According to Martinez, the knife Sylvas used was approximately 12 inches in length, with an approximate six-inch blade.

¹ The Incident Summary presented here is reproduced from FID's report regarding this case, and is supplemented with annotations by the OIG. All OIG annotations are referenced as an "OIG Note." All other references and citations in the reproduced FID Incident Summary (e.g., Investigators' Notes or Addenda Items) are reproduced directly from FID's report. Unless otherwise stated, all information provided in OIG annotations is derived from FID's investigation of this incident.

² Martinez's statement, Page 5, Lines 17-19.



Still image obtained from restaurant surveillance video.

At approximately 1149 hours, CD broadcast on Central Division Frequency; “Any Central Unit, ADW suspect there now, 310 West Fifth Street, 310 West Fifth Street, at Jacky’s Place, suspect male Hispanic armed with a 6-inch knife, incident 2503, stand by for additional.”

At approximately 1151 hours, Central Patrol Division, uniformed Police Officers II Christopher Gelvin, Serial No. 42397, driver, and Philisha Nunley, Serial No. 42129, passenger, Unit 1A85 watch 2, responded Code-3 to the radio call.³ The officers were equipped with Body Worn Video (BWV) cameras, which were mounted on their mid-upper torsos. The officers were driving a marked black and white, sport utility patrol vehicle, Shop No. 81495, which was equipped with ballistic door panels and a Digital in Car Video System (DICVS). Both officers’ BWV and DICVS were activated.⁴

Note: According to Officer Gelvin, he and Officer Nunley had been partners for approximately one year and one month. They had a standing plan that Officer Gelvin’s role at an incident would be to provide lethal cover and Officer Nunley would be armed with less-lethal and would be

³ Officer Nunley stated she was working 1A35 in her transcribed interview; however, the investigation determined her correct unit designation was 1A85.

⁴ Officer Gelvin, 35 years of age, 6 feet 4 inches, 220 pounds, 3 years and 1 month with the Department, equipped with an ASP baton, Oleoresin Capsicum (OC) spray, two pair of handcuffs, a Hobble Restraint Device (HRD), a 9-millimeter Smith & Wesson M&P9 Pro Series semi-automatic pistol, a .38 caliber Smith & Wesson Bodyguard revolver, a X26P TASER, and a ballistic vest; Officer Nunley, 28 years of age, 5 feet 7 inches, 150 pounds, 3 years and 8 months with the Department, equipped with an ASP baton, OC spray, two pair of handcuffs, a HRD, a 9-millimeter Smith & Wesson M&P9 semi-automatic pistol, a X26P TASER, and a ballistic vest.

the contact officer. In addition, they had previous discussions regarding roles of contact and cover.

According to Officer Nunley, she and Officer Gelvin had previously discussed tactics regarding suspects who were armed with knives. Officer Nunley specifically cited a use of force (UOF) incident with a suspect armed with a knife that she and Gelvin had been involved in approximately six months prior. Investigators later determined the incident occurred on June 15, 2018, Incident No. 180614003907, Training Evaluation and Management System (TEAMS II) case No. 2026685.

As Officers Gelvin and Nunley arrived at the location, they were met by Martinez who was in the street flagging them down. Officers Gelvin and Nunley exited their police vehicle and met with Martinez. According to Officer Gelvin, Martinez was wide eyed and seemed afraid. Martinez told them that Sylvas had threatened to slit her throat with a knife. Sylvas had gestured at her with the knife and now had the knife in his pocket. Martinez informed Officers Gelvin and Nunley that Sylvas was still inside the location, wearing a dark hoody.

Note: According to Officer Nunley, Martinez advised officers that Sylvas held the knife to her neck.

OIG Note No. 1: *Officer Nunley's statement was, "...she advised us that the suspect had held a knife to her neck -- or pulled a knife out at her neck and said he was going to cut her throat."⁵ A review of Officers Gelvin and Nunley's BWVs revealed that the victim stated that Sylvas had told her, "Shut up or I am going to slice your throat." The victim made a slicing motion across her own throat as she explained this to the officers.*

While Officer Gelvin continued to speak with Martinez, Officer Nunley went to the police vehicle and deployed a 40-millimeter less-lethal launcher from the trunk. According to Officer Nunley, she deployed the launcher based on the facts that Sylvas posed an immediate threat of violence, Sylvas was armed with a knife, and that Sylvas had already threatened Martinez. Officer Nunley rejoined Officer Gelvin. The officers communicated with each other and made a plan to request an additional unit and supervisor, which Officer Gelvin did on Central Division Frequency.

Note: According to Officer Nunley, she believed she requested the additional unit.

According to Officer Nunley, the 40-millimeter less-lethal launcher was unloaded and on safe when she retrieved the launcher.⁶ She then placed

⁵ Officer Nunley, Page 7, Lines 20-23.

⁶ 40-millimeter launchers are not equipped with a safety.

one live 40-millimeter round into the launcher to make it ready. Officer Nunley then slung the 40-millimeter launcher over her left shoulder, across her back in a "climb and carry" position.⁷

In an attempt to determine Sylvas' current location within the restaurant, Officer Gelvin approached the location. According to Officer Gelvin, he was able to approach undetected due to the fact the location had large stickers depicting menu options covering the windows and the open entrance door, with the exception of a small portion of the window nearest the door. Officer Gelvin was on the sidewalk when he conducted a quick peek into the location through a transparent portion of the window and observed Sylvas standing near the counter. Sylvas was facing away from Officer Gelvin toward the kitchen. Officer Gelvin could see both of Sylvas' hands and observed that Sylvas was not holding a knife. Officer Gelvin relayed his observations to Officer Nunley. Officer Gelvin noted that the inside of the location was very small.

Officer Gelvin's BWV captured the officers continuing to develop their tactical plan. Officer Nunley assigned Officer Gelvin as lethal cover and advised she would be less lethal. According to Officer Nunley, she then proceeded to the open door of the location and stood on the sidewalk, approximately one to two feet from the doorway. According to Officer Nunley, officers attempted to talk to Sylvas because she knew their additional unit was close because she could hear the sirens of the responding unit.

Note: Officer Nunley's BWV, it did not capture a siren in the background. Additionally, the first responding unit did not respond Code-3.

According to Officer Gelvin, he recalled waiting for another unit to arrive prior to engaging Sylvas.

According to Officer Nunley, she observed approximately five people inside the location. Several people were sitting at a nearby countertop and there was a worker in the rear kitchen area. She noted the individuals inside the location were nonchalant and were tuned out to what was going on around them. According to her BWV, Officer Nunley asked Sylvas to step outside five times; however, Sylvas refused the request and stated, "No I'm not stepping out there." Officer Nunley stated she tried to get Sylvas to exit the location because she did not see a knife, and she did not want to contact him with the patrons in close proximity. Officer Nunley intended to have Sylvas face the wall and handcuff him once he exited the location.

Central Area uniformed Police Officers II Nathaniel Lopez, Serial No. 42375, driver, and Leonel Bermudez, Serial No. 42357, passenger, Unit 1Z73 watch 2, responded to the additional unit broadcast. The officers were equipped with BWV cameras, which were mounted on their mid-upper torsos. The officers were driving a marked black and white,

⁷ The sling of Officer Nunley's 40-millimeter launcher covered her BWV. According to Officer Nunley, she recalled slinging the 40-millimeter launcher after the additional unit arrived.

dual purpose police vehicle, Shop No. 87974, which was equipped with ballistic door panels and a DICVS. Both officers BWV and DICVS were activated.⁸

Note: According to Officer Bermudez, he and Officer Lopez had been partners for approximately one year and one month. They had prior discussions regarding tactical scenarios, their roles of lethal and less-lethal cover, and they routinely debriefed their tactics after radio calls.

According to Officer Lopez, while en route to the call, he advised Officer Bermudez to deploy the 40-millimeter less-lethal launcher. According to Officer Bermudez, he went to the trunk of his vehicle upon arrival and deployed the 40-millimeter less-lethal launcher, so he would have it available, based on the comments of the call. Officer Bermudez's BWV captured him removing the 40-millimeter launcher from the trunk and loading one round in the chamber. Officers Lopez and Bermudez proceeded to the front of the location and met with Officers Nunley and Gelvin, who were standing at the doorway of the restaurant. Officer Nunley informed Officer Lopez that Sylvas, who was seated at the table inside the location, brandished a knife at the victim and threatened to cut her throat.

According to Officer Lopez, he began to verbalize with Sylvas in Spanish. Officer Lopez's BWV captured Sylvas responding, "Fuck you. I don't speak Spanish." According to Officer Lopez he then continued to verbalize with Sylvas in English, asking him to exit the location; however, Sylvas refused. Officer Lopez's BWV captured Sylvas refusing Lopez's commands, stating, "Fuck you, I ain't going nowhere."

Officers Nunley and Bermudez decided that Officer Bermudez would be the one to utilize the 40-millimeter less-lethal launcher if necessary. According to Officer Nunley, she then walked approximately five to six steps east to the shop next door to talk to the victim. She also wanted to determine if there was a rear exit to get the people out of the restaurant without having to pass by Sylvas.

Officer Lopez's BWV captured Officer Gelvin inform Officer Lopez that Sylvas had produced a knife and threatened to cut Martinez's throat. Officer Gelvin added that Sylvas may have the knife in his right pocket. Officer Lopez relayed the information regarding the knife to his partner, Officer Bermudez. According to Officer Lopez, after several requests to have him step out, he told Sylvas, "Hey, you're either going to step out or we're going to get you out."⁹

⁸ Officer Lopez, 28 years of age, 5 feet 8 inches, 170 pounds, 3 years and 2 months with the Department, equipped with a side handle baton, OC spray, a pair of handcuffs, a HRD, a 9-millimeter Smith & Wesson M&P9 semi-automatic pistol, a X26P TASER, and a ballistic vest; Officer Bermudez, 29 years of age, 5 feet 11 inches, 180 pounds, 3 years and 2 months with the Department, equipped with a side handle baton, OC spray, two pair of handcuffs, a HRD, a 9-millimeter Smith & Wesson M&P9 semi-automatic pistol, a X26P TASER, and a ballistic vest.

⁹ Officer Lopez's statement, Page 9, Lines 24-25.

Officer Lopez's BWV captured Sylvas seated at a table facing west, just inside the doorway to the location. In response to Officer Lopez's command, Sylvas stated that he had a gun and reached toward his right waistband area. Officer Lopez ordered Sylvas not to pull out the gun. Simultaneously, Officers Lopez and Gelvin unholstered their service pistols. According to Officer Lopez, he unholstered his service pistol and pointed it at Sylvas, with his finger on the slide. He later brought the pistol down to a two-hand low ready position, keeping his finger on the slide. According to Officer Gelvin, he unholstered his service pistol and pointed it at Sylvas due to his belief that if Sylvas produced a gun or another weapon from his jacket, the situation could escalate to the use of lethal force. According to Officer Lopez, Sylvas removed a knife from his person and unfolded it.¹⁰ According to Officer Gelvin, he transitioned to a low ready when he assessed Sylvas had a knife and not a gun.

Note: Officer Gelvin believed Sylvas removed the knife from his jacket pocket and Officer Lopez believed Sylvas removed the knife from his pants pocket. Investigators were unable to determine the exact location from where Sylvas retrieved the knife.



Zoomed in still photo obtained from Officer Gelvin's BWV.¹¹

Sylvas raised and lowered the knife with the blade pointing in a downward direction, extending out from the pinky of his closed right hand. Officers Lopez and Gelvin identified that Sylvas had, in fact, armed himself with a knife and not a firearm. Subsequently, they each notified the other officers who were present of their observations. Officers Lopez and Gelvin backed away from the door creating distance between themselves and the doorway. Officer Lopez stated that he had to balance his

¹⁰ The knife was ultimately determined to be a folding knife that had an approximately 3 ½ inch silver metal blade and a black handle.

¹¹ The following adjustments were made to the still photo: Brightness: +40% Contrast: -40%.

distance from the doorway, giving the suspect room to exit, with possibly rendering aid to individuals inside, and with being able to communicate with Sylvas despite the street noise. According to Officer Lopez, when he redeployed he was approximately 15 feet from Sylvas.

According to Officer Bermudez, upon becoming aware that Sylvas was armed with a knife, he transitioned from facing in a north direction, and providing rear cover, to redeploying and taking a position facing Sylvas. Officer Bermudez's BWV captured him repositioning to the right of Officer Lopez on the sidewalk in front of the doorway. At this time, Officer Bermudez observed two individuals eating inside the location and two workers behind the counter of the location.

Upon learning Sylvas was armed with a knife, Officer Nunley requested a backup over Central Division Frequency.

Referring to the potential discharge of the 40-millimeter less-lethal launcher, Officer Bermudez's BWV captured him warning Sylvas, "Don't rush us or I'm going to hit you with this man. You better drop the knife." That was immediately followed by Officer Gelvin warning Sylvas to drop the knife or less lethal force would be used and it would seriously hurt. According to Officer Bermudez, he looked around for cover and did not see any. Officer Bermudez communicated this to the other officers at scene.¹²

Note: Officer Nunley broadcast a request for a shield to CD at approximately 1201 hours; however, there was no response by responding units to the request. A shield was not deployed during the incident.

According to Officer Lopez, Sylvas grabbed a chair with his left hand and shielded his body with the chair, which left only his head and his right hand that held the knife unprotected. Officer Lopez believed Sylvas' actions were in response to the officers' being armed with less-lethal devices.

Note: According to Sylvas, he grabbed the chair in response to being shot with the less-lethal munitions.

Officer Gelvin then gave Sylvas another command to drop the knife, warning that his partner was going to beanbag Sylvas, and it would seriously hurt.

Moments later, Central Patrol Division, uniformed Sergeant I Richard Hurtado, Serial No. 26872, Unit 1L20 watch 2, arrived at scene. According to Sergeant Hurtado, he met the group of officers in front of the location and was informed by Officer Gelvin that Sylvas had pulled out a knife, committed an assault with a deadly weapon (ADW), and was now inside the location. Sergeant Hurtado assessed the scene and observed that there were individuals inside the location with Sylvas. Sergeant Hurtado motioned to

¹² No parked vehicles can be seen directly behind officers on their BWVs.

the individuals inside the location and ordered them to come out. Sergeant Hurtado's BWV captured a male Hispanic that exited the location in response to Sergeant Hurtado's command.

Note: Investigators were unable to identify the male Hispanic who exited the restaurant.

At 12:00:06 hours, Sergeant Hurtado broadcast, "1L20, Code-4 on this backup. We have sufficient units only."

Sergeant Hurtado began to develop a tactical plan and directed Officers Lopez and Bermudez to step a little closer to the doorway, as he designated Officer Lopez as lethal cover with his service pistol, Officer Bermudez as less-lethal with a 40-millimeter less-lethal launcher, and Officer Nunley as less-lethal with a Taser. He also directed Officer Lopez to continue to verbalize with Sylvas. As Officer Lopez held his position, Officer Lopez asked the other officers if the restaurant had rear access with the thought of either having another entry point or having the citizens inside the location exit from the rear (Investigators' Note No. 1).



Still photo obtained from Sergeant Hurtado's BWV.

Central Patrol Division, uniformed Police Officer II Francisco Acevedo, Serial No. 42386, driver, and Police Officer II Edward Monteagudo, Serial No. 42592, passenger, Unit 1FB5 watch 2, also responded to the additional unit broadcast.¹³ Officers Acevedo and Monteagudo arrived at scene at approximately the same time as Sergeant Hurtado. The officers were equipped with BWV cameras, which were mounted on their mid-upper torsos. The officers were driving a marked black and white, dual purpose patrol vehicle,

¹³ Officers Acevedo and Monteagudo were assigned to Central Patrol Division's Resources Enhancement Services Enforcement Team (REACT). Officer Acevedo was attired in a Basic Duty Uniform (BDU).

Shop No. 80554, which was equipped with ballistic door panels and a DICVS. Both officers BWV and DICVS were activated.¹⁴

As Officer Monteagudo and Acevedo approached the group of officers near the front of the location, Officer Monteagudo saw other officers with their guns drawn, and that a 40-millimeter less-lethal launcher had been deployed. According to Officer Monteagudo, he unholstered his service pistol based on the nature of call, the other officers having their guns drawn, and the belief that the situation could escalate to the use of deadly force. Officer Monteagudo later holstered his pistol when he was tasked with speaking with Victim Martinez.

Central Patrol Division, uniformed Sergeant I Karen Fuentes, Serial No. 38859, Unit 1FB130 watch 4, arrived at the location shortly after Officers Acevedo and Monteagudo. According to Sergeant Fuentes, she approached the group of officers in front of the location and was immediately briefed by Officer Nunley. Sergeant Fuentes noted that there was a designated lethal cover officer, an officer with a Taser, and an officer with a 40-millimeter less-lethal launcher in front of the location. She then assigned Officers Acevedo and Gelvin to be the arrest team. At that time Sergeant Fuentes realized that Sergeant Hurtado was coordinating the incident (Investigators' Note No. 2).

According to Sergeant Hurtado, when Sergeant Fuentes arrived, he told her, "I got this," referring to controlling the tactical portion of the incident. Sergeant Hurtado did not specifically declare himself as the Incident Commander because he was involved with the ongoing tactical situation. However, since he was assigned the radio call and took over command of the tactical portion of the scene, he believed that made him the Incident Commander.

Note: According to Sergeant Fuentes, she believed that Sergeant Hurtado was Incident Commander.

Sergeant Fuentes then assisted with ancillary supervisory duties, which included ensuring an investigative report was signed by the victim and assigning units to assist with perimeter duties (Investigators' Note No. 3).

Sergeant Hurtado asked Sergeant Fuentes for a beanbag shotgun. According to Sergeant Hurtado, he wanted both a 40-millimeter launcher and a bean bag shotgun available, due to the fact Sylvas was armed with a knife. Sergeant Fuentes, in turn, asked Officer Monteagudo if he had one. According to Officer Monteagudo, he retrieved a beanbag shotgun from the locked mount inside the passenger compartment of his vehicle. The beanbag shotgun was loaded with four rounds in the magazine tube.

¹⁴ Officer Acevedo, 30 years of age, 5 feet 7 inches, 175 pounds, 3 years and 2 months with the Department, equipped with OC spray, a pair of handcuffs, HRD, a 9-millimeter Smith & Wesson M&P9 semi-automatic pistol, a X26P TASER, ballistic vest, and a side handle baton in his vehicle; Officer Monteagudo, 26 years of age, 5 feet 8 inches, 190 pounds, 2 years and 8 months with the Department, equipped with an ASP baton, OC spray, two pair of handcuffs, HRD, a 9-millimeter Smith & Wesson M&P9 semi-automatic pistol, a X26P TASER, and ballistic vest.

Officer Monteagudo chambered one beanbag round but did not top off the magazine with an additional round.¹⁵

Sergeant Hurtado ordered Sylvas to drop the knife multiple times, which Sylvas refused. Officer Monteagudo returned with the beanbag shotgun and took a position to the right of Officer Bermudez, who had the 40-millimeter less-lethal launcher. Officer Lopez's BWV captured Sergeant Hurtado attempting to identify where the citizens were located inside the location by asking the other officers. Officer Lopez can be heard ordering the citizens inside the location to go to the back of the restaurant in both English and in Spanish as he motioned with his hand. According to Officer Lopez, he believed some of the citizens went into a back room as a result of his direction. Officer Lopez again inquired if there was rear access to the location, this time directing his question directly to Officer Nunley. Officer Nunley responded by leaving the group and asking Police Officer II Trevor Shultz, Serial No. 40838, who was positioned in the business directly east of the location, meeting with Victim Martinez. Officer Shultz briefly spoke with an employee at that location who informed him that none of the businesses had rear access.

Note: Officer Shultz responded to the backup request and assisted with interviewing the victim. He did not witness the actual UOF. It was determined that no additional investigative insight would be gained by interviewing him; therefore, he was not interviewed.

The officers stood in a row, on the sidewalk, approximately 15 feet from the open door of the location. Officer Nunley was positioned the furthest east of the door armed with a Taser. To the right of Officer Nunley stood Officer Lopez, who was armed with his service pistol. Sergeant Hurtado stood slightly behind and to the right of Officer Lopez. To Sergeant Hurtado's right, stood Officer Bermudez who was armed with a 40-millimeter less-lethal launcher. Officer Monteagudo, who was armed with a beanbag shotgun, stood to the right of Officer Bermudez. Standing in the most west position in the row was Officer Acevedo. Officer Gelvin stood in the street behind Officers Lopez and Bermudez. Officers Acevedo and Gelvin were assigned to the arrest team. Sergeant Fuentes stood in the street, behind the whole grouping of officers.

Note: According to Officer Nunley, Sergeant Hurtado assigned her to the role of the arrest team.

According to Officer Monteagudo, Officer Nunley was assigned the role of lethal cover.

¹⁵ With regards to loading a Remington shotgun, Personnel and Training Bureau Notice 12.1.1, dated March 22, 2012, states in part, "Once the first round is chambered, the magazine may be "topped off" with an additional round."



Still photo taken from Officer Cowan's BWV depicting officers' approximate positions.

Note: Police Officer III William Cowan, Serial No. 41348, responded to the backup request and assisted with crowd control during the incident when the UOF occurred.¹⁶

According to Sergeant Fuentes, she assessed the scene and observed Officer Gelvin with his service pistol unholstered. Based on the fact Officer Gelvin was standing behind Officer Lopez, who was the designated cover officer, Sergeant Fuentes believed a crossfire situation could occur between the officers. Sergeant Fuentes directed Officer Gelvin to holster his pistol, which he did.

Officer Lopez continued to verbalize and attempted to gain rapport with Sylvas. Additionally, Officer Lopez continued ordering Sylvas to drop the knife multiple times. In response to Officer Lopez's commands, Sylvas continued to yell, "Fuck you." Sylvas threatened to kill the officers while intermittently raising the point of the knife toward the officers. Officer Nunley recalled Sylvas threatening, "I'll kill you all," and yelling obscenities.

¹⁶ Officer Cowan was not interviewed during the investigation. Based on Officer Bermudez's BWV, it appeared Officer Cowan may have observed the deployment of the 40-millimeter and beanbag rounds; however, it was determined that Officer Cowan was not substantially involved in the incident and only assisted with crowd control. Additionally, he was not in a position to observe Sylvas' actions during the UOF. Based on the fact the entire event was captured on the involved officers' BWVs, and numerous other officers and witnesses were interviewed, it was determined that no investigative value would be gained by interviewing Officer Cowan.

Note: Third party cellular phone video filmed by Witness Brandon Rodriguez depicted Sylvas yelling, "I'll kill you mother fuckers!" Sylvas then makes stabbing motions with the knife while holding it in an overhand grip.

According to Sergeant Hurtado, Sergeant Fuentes, who was standing behind him, informed him that she had formed an arrest team.

Moments later, Sergeant Hurtado's BWV captured him discussing different areas of Sylvas' body that could be targeted by either the 40-millimeter less-lethal launcher or the beanbag shotgun with Officers Bermudez and Monteagudo. Sergeant Hurtado stated to Sylvas, "Sir, you need to drop the knife or you're going to be... or you're going to be hit with less lethal. You're going to be hit with a rubber bullet and it's going to hurt."

Note: During the use of force warning, Officer Monteagudo can be seen on his BWV disengaging the safety on his beanbag shotgun with his left middle finger, while keeping his index finger along the frame.¹⁷

The video recorded by Rodriguez inside the restaurant captured Sergeant Hurtado's use of force warning. The video also captured Sylvas stating, "Try it motherfuckers. I'll kill you fuckers. I wanna die right here," immediately following the warning.

According to Sergeant Hurtado, he informed Officers Bermudez and Monteagudo that he would call for a beanbag to standby but wanted the 40-millimeter discharged before the beanbag, due to the fact the 40-millimeter was more accurate. Officers Bermudez and Monteagudo both acknowledged this plan.

According to Sergeant Hurtado, Sylvas was holding the knife and making a stabbing motion with it. Sergeant Hurtado observed four people inside the location and believed Sylvas could have stood up and stabbed one of the patrons. According to Sergeant Hurtado, he transitioned from verbalization to the deployment of less lethal because Sylvas was aggressive, he wasn't putting the knife down, and there was a need to protect the citizens inside the restaurant. Sergeant Hurtado then yelled, "beanbag standby!"

Note: According to Sergeant Hurtado he does not know why he did not declare, "40-millimeter standby," but attributed it to not having dealt with the 40-millimeter before.

¹⁷ Officer Monteagudo is left-handed. According to Shotgun Instructor Training School (SITS) instructor Police Officer III Hilary Colvin, Serial No. 31719, In-Service Training Division, the act of deactivating the Remington shotgun safety with the left middle finger is consistent with Department training standards for left-handed officers.

According to Officer Nunley, she heard, "Code Sam stand by." She also believed that the officer firing the beanbag gave the command to standby.

OIG Note No. 2: *In the video taken by Witness Rodriguez, prior to the use of less-lethal force, Sylvas is depicted seated in a chair; he is holding another chair over his lap as a shield with his left hand, holding the knife in his right hand, and verbally threatening officers as they give him directions.*

According to Officer Bermudez, he believed that Sylvas, who was armed with a knife, posed an immediate threat to the patrons inside the restaurant and the officers, so Officer Bermudez targeted Sylvas' right hand and discharged his first 40-millimeter round. Officer Bermudez believed he struck Sylvas' right hand with the round; however, Sylvas did not drop the knife. According to Officer Bermudez, he targeted Sylvas' hand because that was the hand holding the knife and because that was his only target due to Sylvas' torso being shielded by the chair. Additionally, Officer Bermudez believed that striking Sylvas' hand might cause him to drop the knife. According to Officer Lopez, he observed the 40-millimeter round strike Sylvas in the right hand and noted that it had no effect (Investigators' Note No. 4).

Sergeant Hurtado's BWV captured him stating, "go ahead, hit with." followed by Sergeant Hurtado again ordering Sylvas to drop the knife. According to Sergeant Hurtado, Sylvas still had the knife in his hand and the chair in front of him, which is why he ordered an additional round to be fired. Sergeant Hurtado advised Sylvas remained in this position until he dropped the knife, and this was the reason he ordered each less lethal round to be fired.

Officer Bermudez reassessed and reloaded the launcher. According to Officer Bermudez, Sylvas was still armed with the knife, was refusing to comply and had become increasingly irritated after the first round. Sylvas was violently resisting by waving the knife in increasingly larger upward and downward motions, and he was still a threat to the people inside the location and the officers. Officer Bermudez waited for Sylvas to lower his hand to minimize the chance of a ricochet and striking anyone else inside the location. When he did so, Officer Bermudez targeted Sylvas' right hand and discharged a second 40-millimeter round. Upon reviewing Rodriguez's cellular phone video, it appeared that the second 40-millimeter round did not impact Sylvas and may have impacted the glass display case behind Sylvas.

- **Note:** Officer Bermudez believed the round struck Sylvas' hand for a second time.

Following the discharge of the second 40-millimeter round, Sergeant Hurtado's BWV captured both Sergeant Hurtado and Officer Lopez again ordering Sylvas to drop the knife. Officer Lopez also advised officers that the suspect was still armed.

According to Officer Bermudez, he again reloaded the launcher and reassessed the situation. He noticed the suspect was injured and had started to bleed. Sylvas was still armed with the knife and was threatening to kill the officers. Officer Bermudez observed Sylvas raise the chair, higher than it had been, exposing his legs. Officer Bermudez communicated his observations to Sergeant Hurtado, who in turn, ordered him to target Sylvas' leg. Due to the ineffectiveness of the first two rounds, Officer Bermudez believed targeting Sylvas' leg would be a viable alternate target, causing Sylvas to drop the knife and de-escalate the situation. Officer Bermudez targeted Sylvas' right outer thigh and discharged his third 40-millimeter round. Officer Bermudez believed he struck Sylvas' outer right leg with the third round; however, Sylvas still had not dropped the knife. Officer Bermudez then extracted the spent 40-millimeter cartridge case from the launcher, closed the empty breach, and slung the launcher over his left shoulder and across his back in a "climb and carry" position. Officer Bermudez discharged each of his three 40-millimeter rounds at Sylvas from a distance of approximately 22 feet.



Still photo obtained from Officer Bermudez's BWV.

After the discharge of the third 40-millimeter round, Sergeant Hurtado's BWV captured him stating, "Bean bag, bean bag!" According to Officer Monteagudo, the only viable target on Sylvas' body was his upper right arm, because he was still shielding himself with a chair. Officer Monteagudo targeted Sylvas' upper right arm and discharged one beanbag round. Officer Monteagudo believed he struck Sylvas' right arm. Officer Monteagudo discharged his first beanbag round at Sylvas because he believed that the 40-millimeter rounds had been ineffective; Sylvas was still armed with the knife and in close proximity to the patrons, and he wanted to prevent Sylvas from attacking the patrons and creating a potential hostage situation.

Note: According to Officers Acevedo and Monteagudo, the blade of the knife was six to seven inches long.

After discharging the first beanbag round, Officer Monteagudo chambered another round and reassessed. He stated that Sylvas started screaming louder and continued to wave the knife in an overhand grip with the blade facing downward, as if to overhand stab someone. Officer Monteagudo targeted Sylvas' right thigh and discharged a second beanbag round, which he believed struck Sylvas' right thigh. According to

Officer Monteagudo, he discharged his second beanbag round due to Sylvas becoming increasingly irate, screaming louder, and continuing to wave the knife. Immediately following the impact of the second beanbag round, Sylvas dropped the knife. Officer Monteagudo discharged both of his beanbag rounds at Sylvas from a distance of approximately 22 feet.

Note: Rodriguez's cellular phone video appeared to depict that the first beanbag round impacted Sylvas' right leg and the second beanbag round impacted Sylvas' right arm.

Rodriguez's cellular phone video depicted Sylvas making a guttural sound in reaction to being hit with the first beanbag round. Sylvas then began to move the chair up and down, continuing to use it as a shield. Sylvas continued to hold the knife in his right hand in an overhand position, while controlling and moving the chair with both hands.



Still photo obtained from Officer Monteagudo's BWV.

After the discharge of the second beanbag round, Sergeant Hurtado observed the knife "fly out" of Sylvas' hand and onto the ground. Sergeant Hurtado believed that it was a good opportunity to take Sylvas into custody, so he ordered the officers to enter the location. Sergeant Hurtado's BWV captured Officer Lopez enter the location first, followed by Officers Monteagudo, Acevedo, Bermudez, Gelvin, Nunley, and finally Sergeant Hurtado. Just after entering the location, Officer Monteagudo slung his beanbag shotgun over his left shoulder and across his back in a "climb and carry" position (Investigators' Note No. 5).

According to Officer Lopez, he advised the other officers that Sylvas had dropped the knife. Officer Lopez believed it would be his only opportunity to take Sylvas into custody, before he could rearm himself. Officer Lopez entered the location, still providing lethal cover. Sylvas was still seated in a chair facing the open door, grasping the chair he was using as a shield with both hands, as the officers entered the location. While holding his pistol in his right hand, Officer Lopez used his left hand and grabbed Sylvas' right hand, in an attempt to keep Sylvas from reaching for the knife.

Simultaneously, Officer Lopez attempted to kick the knife away with his right foot but was unsuccessful. Officer Lopez then moved to allow the arrest team to take Sylvas into custody.

Note: According to Officer Lopez, he believed he may have covered his left hand with the muzzle of his pistol when he grabbed Sylvas' right hand.

Officers Acevedo and Bermudez were next to contact Sylvas. According to Officer Acevedo, the knife was on the ground, approximately two feet to the left of Sylvas. In an effort to keep Sylvas away from knife, Officer Acevedo grabbed Sylvas' right arm with his right hand and began to guide him to the ground, away from the knife. Officer Bermudez's BWV captured him place his left hand on the back of Sylvas' left arm and his right hand on the left side of Sylvas' back. Officer Bermudez then pushed Sylvas toward the floor as Officer Acevedo rotated Sylvas to his right, off the chair he was seated on, to the ground. Rodriguez's cellular phone video captured Officer Acevedo grasping Sylvas' right wrist with his right hand and then placing his left hand on Sylvas' left arm to begin guiding him to the ground. Officer Acevedo then released the grip on Sylvas' left arm and placed his left forearm across Sylvas' upper back and applied bodyweight as he continued to guide Sylvas to the ground.

Note: According to Officer Acevedo, he grabbed Sylvas' left arm with his left hand.

According to Officer Bermudez, Sylvas was leaning his body towards the knife and was reaching for it. Upon reviewing BWV of the various officers, the actions of Sylvas, as described by Bermudez, did not appear to be captured.

As Officer Acevedo guided Sylvas, and Officer Bermudez pushed on Sylvas' arm and back, Officer Monteagudo grabbed Sylvas' left arm. Officer Monteagudo used his left hand to grasp Sylvas' left wrist, while his right hand maintained a C-grip on Sylvas' left elbow as he assisted in taking Sylvas down to the ground. As Sylvas was being taken to the ground, Officer Gelvin observed Sylvas' knife on the ground near the chair where Sylvas had been seated. Officer Gelvin picked up the knife, using a couple of his fingers to grip the edges of the handle. Officer Gelvin's BWV captured him stating, "I got the knife! Knife's out of play! Knife's out of play!"

As Sylvas went to the ground, he was able to pull his right hand under his body. Officer Monteagudo placed his right knee onto Sylvas' lower back area and placed his left knee onto Sylvas' shoulder blades, while maintaining control of his left arm. Once Officer Monteagudo realized Officer Acevedo could not grasp Sylvas' right arm, he took his body weight off and lifted Sylvas' body up by his left arm. Officer Acevedo's BWV captured him use his right and left hands to pull at the right sleeve of Sylvas' sweatshirt, which in turn pulled Sylvas' right hand out from under his body.

Note: According to Officer Acevedo, he used his left hand to control Sylvas' right inner elbow, while using his right hand to pull Sylvas' right hand out from under his body.

While Officer Acevedo attempted to pull Sylvas' hand out from under his body, Officer Lopez activated his pistol mounted flashlight, in an attempt to illuminate the suspect's right hand. Officer Lopez stated that he remained unholstered while Sylvas was being taken into custody, due to the fact he was unsure if Sylvas had another weapon. Officer Nunley's BWV captured Officer Nunley position herself near Sylvas' feet. Officer Nunley can be heard stating to Sylvas, "Relax... Relax... Relax or I'm going to tase you." Officer Nunley is seen holding the Taser in her right hand. The laser sight of the Taser can be seen emitting from the Taser during that time (Investigators' Note No. 6).

Officer Acevedo used his right hand to control Sylvas' right wrist and his left hand to apply a wrist lock to Sylvas' right hand and wrist. Officer Acevedo then placed Sylvas' right hand behind his back. Officer Monteagudo repositioned himself, placing his right knee onto the Sylvas' lower back area and placing his left knee onto Sylvas' shoulder blades, while maintaining control of his left arm. Officer Monteagudo then brought Sylvas' left arm behind his back. Simultaneously Officer Monteagudo used his right hand to place Sylvas' left fingers into a finger flex position. Officer Nunley holstered her Taser and assisted with handcuffing Sylvas. Officer Nunley handcuffed Sylvas' right wrist and then his left wrist, and searched Sylvas' rear waistband for weapons. Officer Gelvin's BWV captured Officer Lopez holstering his pistol prior to Sylvas being handcuffed.¹⁸

Note: According to Officer Monteagudo, he believed that Officer Nunley handed Officer Acevedo handcuffs for cuffing.

According to Officer Lopez, he holstered his pistol once the suspect was handcuffed.

At approximately 1207 hours, officers broadcast a Code-4 and that the suspect was in custody.¹⁹ Officer Nunley maintained a grip of Sylvas' left arm and Officer Acevedo maintained a grip of Sylvas' right arm. Officers Nunley and Acevedo moved Sylvas into a seated position and stood him up. The officers then guided Sylvas out of the business and to the rear of Officer Nunley's police vehicle. Officer Acevedo searched Sylvas while standing at the rear of the vehicle.

¹⁸ Officers Acevedo and Nunley were wearing latex gloves during their physical contact with Sylvas. Officers Lopez, Monteagudo, and Bermudez were not wearing gloves during their physical contact with Sylvas.

¹⁹ The incident recall reflects the time of the Code-4 as 1209 hours.



Still photo obtained from Witness Rodriguez's cell phone video.²⁰

At approximately 1208 hours, officers requested a rescue ambulance (RA) for Sylvas.

Los Angeles Fire Department (LAFD) personnel responded to the scene and began treating Sylvas for wounds to his hands. Sylvas was transported to Los Angeles County University of Southern California Medical Center (USCMC) for treatment. Sylvas was later admitted to the hospital for an open fracture to his right hand.

At approximately 1738 hours, the Department Operations Center (DOC) was notified of the Law Enforcement Related Injury.

Force Investigation Division Detective II Brad Michel, Serial No. 36782, reviewed all documents and circumstances surrounding the separation, and monitoring of the involved officers (Addendum No. 1), (Investigators' Note No. 7).

Scene Description

The Law Enforcement Related Injury occurred at 310 West Fifth Street, Jacky's Restaurant, which is located in the downtown area of Los Angeles, on the south side of Fifth Street. Fifth Street is a one-way street with four westbound only lanes of traffic. The location is surrounded by both commercial businesses and residential apartments. Large stickers depicting menu options cover the majority of glass storefront windows

²⁰ Video rotated 90 degrees.

and front door, with the exception of a small portion of the window nearest the front door. The front door faces north toward Fifth Street and is situated on the west portion of the store front.

Upon entering the location, there is a small dining area. The dining area consists of three small tables with chairs around each. There is a bar top that is located along the glass storefront with stools underneath. Metal storage shelving, a countertop, and a glass refrigerator display bisect the dining room and the kitchen area. The kitchen area has various food preparation areas, a refrigerator, and several metal sinks. There is a small bathroom just off the kitchen area. According to measurements taken at scene, the dining area where the use of force occurred is approximately seven feet 10 inches from the front window to the glass refrigerator display, and 17 feet six inches wide.²¹

The incident occurred during the daytime at approximately 1206 hours. The weather conditions were dry and clear. Due to the incident occurring during daytime hours, lighting conditions were not a factor.

Canvass for Witnesses

On February 26, 2019, Sergeant Fuentes interviewed four witnesses that were inside the business during the time of the incident. Believing she was investigating a Non-Categorical Use of Force, Sergeant Fuentes recorded all four interviews on her BWV. Force Investigation Division detectives later conducted re-interviews of three of the witnesses. The fourth witness could not be located and did not return investigators' telephone calls. Unless otherwise noted, statements of all witnesses were recorded, transcribed and are contained in this report.

On March 5, 2019, FID Detectives interviewed Witness Brandon Rodriguez. Rodriguez was one of the patrons inside the restaurant when the use of force occurred. According to Rodriguez, prior to recording the incident with his cell phone, the officers were ordering the suspect out of the location, but Sylvas said he didn't want to come out. According to Rodriguez, Sylvas removed the knife from his pocket and threatened to stab the people in the restaurant, was going to cut the police officers' faces, and was going to kill himself. It was at this time that Rodriguez began recording the incident. Rodriguez also supplied detectives with the cellular phone video that he filmed from inside the restaurant. The statement of the witness was recorded, transcribed and is contained in this report.

Note: Officers' BWV did not capture Sylvas verbally threatening the patrons in the restaurant.

Rodriguez described Sylvas as a male Black.

²¹ The rear kitchen area was not included in these measurements.

On March 12, 2019, FID Detectives interviewed Victim Martinez. Her statement was recounted in the summary above.

On March 14, 2019, FID Detectives conducted a secondary canvass of the area surrounding 310 West Fifth Street. The parameters consisted of the north and south sides of the 300 block of West Fifth Street from Broadway to Hill Street. Detectives located and interviewed an additional witness, Noel Madrid, who observed part of the incident from across the street. The witness also supplied detectives with cellular phone video that he filmed from across the street. The statement of the witness was recorded, transcribed and is contained in this report.

Additionally, a letter which described the incident and a request for witnesses to contact investigators was left at the various apartment buildings and businesses in the area. As of the completion of this report, no additional witnesses were located.

Suspect Information



Kenneth Sylvas was a male American Indian with gray hair and brown eyes.²² At the time of this incident, he was 5 feet 9 inches tall, weighed 170 pounds, and was 68 years old, with a date of birth of November 9, 1950. He was identified by CII No. A03953393 and California Driver License No. S0376318. His criminal history consisted of a felony conviction for Assault with a Deadly Weapon. Sylvas also had numerous misdemeanor convictions for Criminal Threats, Battery, Assault, Vandalism, Disturbing the Peace, Drunk Driving, Drunk Driving with a Prior, and Driving on a Suspended License. Sylvas was not on parole or probation at the time of the incident. He was not the subject of any LAPD Mental Evaluation Unit (MEU) contacts and did not belong to a criminal street gang (Addendum No. 2).

Sylvas waived his Miranda Rights and provided FID detectives a statement. Sylvas stated he carried the knife for protection but denied using it in a threatening manner, stating, "I just sat it right there and I said I didn't do nothing."²³ Sylvas heard the officers' orders to drop the knife but refused to comply because he believed he had not done anything wrong. Sylvas also stated he used a chair for protection from the less-lethal munitions.

Note: During Sylvas' interview, he stated he had \$600, which was taken by the LAPD. According to Sylvas' booking paperwork, Sylvas had \$603.59, which was booked with his property (Addendum No. 3).

²² Victim and witness descriptions of Sylvas' ethnicity vary between Hispanic and Black.

²³ Sylvas' statement, Page 14, Lines 10-11.

FID Criminal Apprehension Team (CAT) Detective II Robert McCarty, Serial No. 31125, completed a combined crime and arrest report naming Sylvas as a suspect of California Penal Code Section (PC) 422(A) - Criminal Threats, under DR No. 1901-07924, and crime reports for Officer Nunley, Officer Lopez, Officer Monteagudo, Officer Bermudez, and Victim Martinez, with DR Nos. 1901-07924, 1901- 07928, 1901-07931, 1901-07933, 1901-07934 respectively.

Sylvas was booked under booking No. 5558045.

On February 28, 2019, Los Angeles County District Attorney's Office filed one count of 422(A) PC- Criminal Threats and two counts of 69 PC – Resisting Arrest.

On May 30, 2019, a preliminary hearing was conducted and Sylvas was held to answer on one count of 422(A) PC- Criminal Threats, one count of 69 PC- Resisting Arrest, and one count of 245(C) PC- Assault with a Deadly Weapon on a Peace Officer.

On October 9, 2019, Sylvas pled Nolo Contendere to one count of 422(A) PC – Criminal Threats, and was placed on formal probation for three years, and sentenced to serve 452 days in Los Angeles County Jail.

Injuries

Los Angeles Fire Department (LAFD) Engine No. 9 responded to the scene and treated Sylvas. Engine No. 9, with Captain Felipe Villegas, Firefighter Ryan Eugenio, Firefighter /Paramedic Eric Newman, and Engineer Loren Clements were present at the scene. Firefighters Newman and Eugenio provided basic first aid to Sylvas. Firefighter Newman verbally noted an approximately one-inch laceration on Sylvas' left hand and wrapped each of Sylvas' hands in gauze. Rescue Ambulance (RA) No. 809 later responded with Firefighters Ryan Boswell and Justin Washington, and transported Sylvas to Los Angeles County USCMB for treatment.

Sylvas was later admitted to the hospital for an open fracture to his right hand.

Sylvas signed a medical release form authorizing Los Angeles County USCMB to release medical records to investigators, which were later obtained. According to the medical records, Sylvas was treated for an abrasion to his left palm, abrasions to his right thigh, and an open fracture to his right hand (Addendum No. 4).

Note: An abrasion to Sylvas' left palm was noted on page 24 of the medical report; however, on page 34 of the report, it was noted that Sylvas' left hand had coagulated blood with no sources of bleeding or wounds. Additionally, it was noted on Sylvas' triage notes he was bean bagged to the chest. However, the investigation revealed the Sylvas was not bean bagged in the chest; however, he did not receive medical treatment for any injury to his chest.

According to Sylvas' medical records, he did not complain of pain, nor was he treated for any injury to his right arm.

Officer Acevedo sustained a minor abrasion to his left elbow during the incident. He did not seek medical attention for the injury.

Evidence

FID CAT Detective Gerardo Pantoja Serial No. 32483, responded to Los Angeles County USCMC and obtained a DNA sample from Sylvas, buccal swab (Item No. 1). Due to Central Division personnel initially believing the incident would be handled as a Non-Categorical Use of Force, all items at the crime scene were collected prior to the arrival of FID detectives. Detective McCarty collected the following items at Central Station: a folding knife (Item No. 2), (2) projectiles (40-millimeter eXact iMpact rounds Item No. 3), projectile (foam tip of 40-millimeter eXact iMpact round Item No. 4), projectile (black plastic portion of 40-millimeter eXact iMpact round Item No. 5), casing (spent cartridge case of 40-millimeter eXact iMpact round Item No. 6), and (2) beanbag socks (Item No. 7).

There was a total of 7 items of evidence booked in conjunction with this investigation (Addendum No. 5).

Weapons



Kenneth Sylvas was armed with folding knife that had an approximate 3 ½" silver metal blade and a black handle.

Officer Bermudez was armed with a Department approved 40-millimeter less-lethal launcher, Serial No. FW17344. During the incident, Officer Bermudez discharged three 40-millimeter eXact iMpact rounds from the 40-millimeter less-lethal launcher.

Officer Monteagudo was armed with a Department approved beanbag shotgun, Serial No. D148509M. During the incident, Officer Monteagudo discharged two super-sock rounds from the beanbag shotgun.

On March 1, 2019, Department Armorer, Police Officer III Alexander Chan, Serial No. 33543, inspected both the 40-millimeter less-lethal launcher and the beanbag shotgun and found each functioned properly and to be within Department specifications (Addendum No. 6).

Visual Documentation

Digital In-Car Video System (DICVS)

The DICVS for Officers Nunley and Gelvin, Unit 1A85, Shop No. 81495, recorded two videos. The first DICVS captured the officers' Code 3 response, the officers' initial interview with Victim Martinez, a partial view of the less-lethal munitions being discharged, and the arrival of LAFD personnel. Additionally, the audio of the officers speaking to Sylvas and amongst themselves was recorded. The second DICVS was recorded after the incident which did not provide any additional investigative insight.

The DICVS for Officers Bermudez and Lopez, Unit 1Z73, Shop No. 87974, recorded one video, which captured Sylvas being escorted to the rear of Officers Nunley and Gelvin's police vehicle, and the arrival of LAFD personnel. The video did not visually capture the discharge of the less-lethal munitions; however, the audio of those discharges could be heard. Additionally, the audio of the officers speaking to Sylvas and amongst themselves was recorded.

The DICVS for Officers Monteagudo and Acevedo, Unit 1FB5, Shop No. 80554, recorded one video, which captured the officer's Code 3 response, Sylvas being escorted to the rear of Officers Nunley and Gelvin's police vehicle, and the arrival of LAFD personnel. The video did not visually capture the discharge of the less-lethal munitions; however, the audio of those discharges could be heard. Additionally, the audio of the officers speaking to Sylvas and amongst themselves was recorded.

The DICVS for Sergeant Hurtado, Unit 1L20, Shop No. 81480, recorded two videos. The first video captured the sergeant's Code 3 response, Sylvas being escorted to the rear of Officers Nunley and Gelvin's police vehicle, and LAFD personnel treating Sylvas. The video did not visually capture the discharge of the less-lethal munitions; however, the audio of those discharges could be heard. Additionally, the audio of the officers speaking to Sylvas and amongst themselves was recorded. The second video was recorded after the incident and did not provide any additional investigative insight.

The DICVS for Sergeant Fuentes, Unit 1FB130, Shop No. 81990, recorded one video, which captured the sergeant's Code 3 response, Sylvas being escorted out of the restaurant, and LAFD personnel's arrival.

The remaining Central Division Patrol units that activated their DICVS while responding to the incident were identified and reviewed by investigators. These videos did not provide any additional investigative insight.

Body Worn Video (BWV)

Officer Bermudez's BWV recorded one video that captured Officer Bermudez discharging three 40-millimeter projectiles and Officer Monteagudo discharging two beanbag rounds.

Officer Monteagudo's BWV recorded three videos. The BWVs captured Officer Bermudez discharging three 40-millimeter projectiles and Officer Monteagudo discharging two beanbag rounds. LAFD Personnel can be seen treating Sylvas as he stands in the street prior to being transported to the hospital.

Officer Lopez's BWV recorded one video that captured Officer Lopez verbalizing with Sylvas and a portion of Sylvas being taken into custody.

Officer Acevedo's BWV recorded two videos. The BWVs captured Officers Bermudez and Monteagudo discharge less lethal munitions, Officer Acevedo taking Sylvas into custody, and Officer Acevedo interview witnesses.

Officer Nunley's BWV recorded four videos. The BWVs captured the discharge of the less lethal munitions, LAFD personnel treat Sylvas, Officer Nunley review surveillance video inside the location, and interviews of witnesses.

Officer Gelvin's BWV recorded three videos. The BWVs captured Officer Gelvin give Sylvas a use of force warning, the discharge of the less lethal munitions, and Officer Gelvin recover Sylvas' knife.

Sergeant Hurtado's BWV recorded one video that captured Sergeant Hurtado give Sylvas a use of force warning, and the discharge of the less lethal munitions.

Sergeant Fuentes' BWV recorded one video that captured Sergeant Fuentes designating an arrest team, a portion of the discharge of the less lethal munitions, and Sergeant Fuentes interview witnesses.

All additional BWVs of responding Central Division units were reviewed. Unless noted above, the additional videos did not contain investigative value.

Social Media

Personnel assigned to FID's Cyber Unit monitored social media sites from the date of the incident until the submission of this investigation. No additional evidence, information or witnesses were identified.

Other Department Video

There are no other Department videos of this incident.

Outside Video

On February 26, 2019, Police Surveillance Specialist I Justin Villorante, Serial No. N5240, Technical Investigation Division (TID), responded to the crime scene and downloaded surveillance footage from 310 West Fifth Street and 312 West Fifth Street. The interior of 310 West Fifth Street, Jacky's Restaurant, had three cameras which

captured Sylvas and Martinez's interaction prior to police arrival, the use of force, and Sylvas being taken into custody. The timestamp on the video was determined to be approximately 12 minutes slower than the actual time. The video was stored under Digital Control Number 741502.

The exterior of 312 West Fifth Street had one surveillance camera pointed east toward Fifth Street and the sidewalk adjacent to the front of the restaurant. The video captured the discharge of the less-lethal munitions, Sylvas being escorted out of the restaurant, and the arrival of LAFD personnel. The video was stored under Digital Control Number 741501.

Note: Neither of the two video surveillance systems recorded audio.

On March 5, 2019, FID detectives met with Witness Brandon Rodriguez who supplied three cellular phone videos that he recorded during the incident. The videos were filmed inside the restaurant and captured Sylvas threatening officers with the knife, Sylvas being struck by the less lethal munitions, and a portion of Sylvas being taken into custody. The videos were later transferred to a compact disc, stored under Digital Control Number 729438, and is contained in the FID case file.

On March 14, 2019, FID detectives met with Witness Noel Madrid, who supplied them with two cellular phone videos he recorded during the incident. The video was filmed outside of the restaurant from the north side of Fifth Street, from behind the officers. The videos captured commands given to Sylvas to drop the knife, and the discharge of the less-lethal munitions. The video was later transferred to a compact disc, stored under Digital Control Number 729439, and is contained in the FID case file.

Photographs

On February 26, 2019, Photographer III Marie Sallaberry, Serial No. N3637, TID, responded and photographed the crime scene under Digital Control Number D0787744.

On February 26, 2019, prior to the incident being declared a Categorical Use of Force, Central Area uniformed Sergeant I Roberto Ruiz, Serial No. 38154, and Sergeant Hurtado were assisting with the use of force investigation. Sergeant Hurtado photographed the restaurant at 310 West Fifth Street and Sergeant Ruiz photographed Sylvas at Los Angeles County USCMC. The photographs are stored under Digital Control Number 729441.

On February 26, 2019, prior to the incident being declared a Categorical Use of Force, Central Area uniformed Sergeant I Bruce Coss, Serial No. 37023, was assisting with the use of force investigation. Sergeant Coss directed Police Officer III Jesus Toris, Serial No. 38214, to photograph Officer Monteagudo at Central Station. The photographs are stored under Digital Control Number D0503194.

On February 28, 2019, Detective Michel took a photograph of the less-lethal munitions that were booked in conjunction with the incident, Items 2-7. The photographs are stored under Digital Control Number 729440.

Notifications

Following the use of force, Sergeant Hurtado notified Sergeant I Fabian Ospina, Serial No. 25510, Central Area Assistant Watch Commander of the incident. According to Sergeant Hurtado, the incident was originally investigated as Non-Categorical Use of Force. Consistent with a Non-Categorical Use of Force investigation, witnesses were interviewed, photographs were taken, and video was reviewed by various personnel.

Upon observing the injuries to Sylvas' hands, Sergeant Hurtado called the Central Watch Commander again and notified him that Sylvas may require sutures, and therefore believed the incident may be classified as a Categorical Use of Force.

Note: Sergeant Hurtado believed he notified Sergeant II James Sterling, Serial No. 35950, Central Area Watch Commander, of Sylvas' injuries during his second phone call.

During the Non-Categorical Use of Force investigation, Central Area contacted FID regarding the severity of Sylvas' injury. FID personnel responded and were conducting an assessment of the incident when Sylvas was admitted to the hospital. Categorical Use of Force protocols were initiated and FID Lieutenant II Jeffery Wenninger, Serial No. 30572, notified the Department Operations Center of the Law Enforcement Related Injury at 1738 hours (Addendum No. 7).

Personnel at Scene

Force Investigation Division Detective II Jennifer Kim, Serial No. 36639, arrived at scene at approximately 1600 hours.

Communications

A copy of the Communications Division (CD) printout and master recording for Incident No. 190226002503, including Central Division Frequency, have been stored at FID. The digitally recorded interviews of the involved and percipient officers and civilian witnesses are stored in the TEAMS II database (Addendum No. 8).

Justice System Integrity Division Review

This case did not meet the criteria for presentation to the Los Angeles County District Attorney Office, Justice System Integrity Division (JSID).

Investigators' Notes

1. Sergeant Hurtado's BWV captured his use of profanity during the incident. According to Sergeant Hurtado, this comment was said to himself and not directed at anyone. He was frustrated the patrons were not exiting the restaurant. An email regarding this issue was sent to the Commanding Officer of Central Area.
2. According to Sergeant Fuentes, she placed herself Code 6 with CD once there was a Code 4 at the location. Additionally, Sergeant Fuentes did not broadcast she responded Code 3 to the incident. An email regarding this issue was sent to the Commanding Officer of Central Area.
3. During the incident, Sergeant Hurtado made the assessment that Sylvas may be suffering from mental illness or under the influence of narcotics. According to Sergeant Hurtado, he did not notify the Mental Evaluation Unit (MEU) during the incident due to the ongoing tactical situation. Similarly, Sergeant Hurtado did not notify Metropolitan Division Special Weapons and Tactics (SWAT) due to the ongoing tactical situation. An email regarding this issue was sent to the Commanding Officer of Central Area.
4. Officer Bermudez's BWV captured him thumb cocking his 40-millimeter less-lethal launcher, and placing it into single action, prior to his first discharge. An email regarding this issue was sent to the Commanding Officer of Central Area.
5. Officer Monteagudo recorded three BWVs. The first BWV turns off as Monteagudo near the threshold of the location and brings his beanbag shotgun to low ready. According to Officer Monteagudo, he was unaware his camera turned off and did not intentionally shut it off. He turned his camera back on as soon as he realized it was off. An email regarding this issue was sent to the Commanding Officer of Central Area.
6. The laser sight on Officer Nunley's Taser can be seen emitting from the Taser while Sylvas is being taken into custody. It appeared on Officer Nunley's BWV that the laser sight momentarily covered Officer Monteagudo's back and the back of Officer Acevedo's head. An email regarding this issue was sent to the Commanding Officer of Central Area.
7. According to the Watch Commander's log, Sergeant Hurtado was monitored by Sergeant Ospina in the Watch Commander's office. No separate log was found for Sergeant Ospina. The Watch Commander's log did not note the chronological progress for the monitoring of Sergeant Hurtado. Additionally, the Watch Commander's log did not reflect the separation or monitoring of Sergeant Fuentes. No additional logs were located to document her separation and monitoring. An email regarding this issue was sent to the Commanding Officer of Central Area.

8. The investigation revealed the following issues concerning BWV activations:

- Officer Nunley's fourth BWV depicted her reviewing surveillance video and interviewing a witness during the two-minute buffering period, prior to the activation.

OIG Note No. 3: Officer Nunley's BWV was activated throughout the entirety of the tactical incident. Following the incident, Officer Nunley activated her BWV three additional times.

- Lopez had approximately 34 seconds of buffering prior to his BWV activation.
- Sergeant Hurtado responded Code 3 to the incident. His BWV was activated once he arrived at scene.
- Officer Monteagudo responded Code 3 to the incident. His BWV was activated upon arriving at scene and captured approximately 15 seconds of buffering prior to activation.
- Officer Acevedo responded Code 3 to the incident. He activated his BWV after he was at scene for approximately one minute. Approximately one minute and 10 seconds of buffering was captured.
- Sergeant Fuentes responded Code 3 to the incident. Her BWV was activated upon her arrival at scene and captured approximately 47 seconds of buffering.
- Police Officer II Shawnice Robinson, Serial No. 42174, responded Code 3 to the backup request. Her BWV was activated during the Code 3 response, which displayed an approximate three second buffer prior to activation.
- Police Officer II Karen Mondragon, Serial No. 42171, responded Code 3 to the backup request. Her BWV was activated during the Code 3 response, which displayed an approximate nine second buffer prior to activation.

An email regarding this issue was sent to the Commanding Officer of Central Area.

The investigation determined Sergeant Hurtado was not wearing a ballistic vest and did not have a hobble restraint device on his person at the time of the incident.

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CHIEF OF POLICE REPORT²⁴

Chief of Police Findings

Tactics – Administrative Disapproval, Sergeant Hurtado. Tactical Debrief, Sergeant Fuentes, along with Officers Acevedo, Bermudez, Gelvin, Lopez, Monteagudo and Nunley.

Drawing/Exhibiting – In Policy, No Further Action, Officers Gelvin, Lopez and Monteagudo.

Non-Lethal Use of Force – In Policy, No Further Action, Officers Acevedo, Bermudez, Lopez, Monteagudo and Nunley.

Less-Lethal Use of Force – In Policy, No Further Action, Officers Bermudez and Monteagudo.

Chief of Police Analysis

Detention

- Officers Gelvin and Nunley responded to a radio call of an ADW suspect there now.

Upon arrival, Officers Gelvin and Nunley were flagged down by the PR (Martinez), who advised them that the suspect (Sylvas) had brandished a knife and threatened to slit her throat. Martinez directed the officers to Sylvas who was seated inside Jacky's Restaurant. Prior to approaching Sylvas' location, Officer Gelvin verified the response of additional units and a supervisor due to the information from Martinez. Additional officers and Sergeant Hurtado responded to the request. The confined space of the restaurant placed the restaurant patrons and employees within close proximity of Sylvas who was violent and armed with a knife. In order to protect the citizens inside the restaurant from Sylvas, the officers utilized less-lethal force which caused Sylvas to drop the knife. Officers then used non-lethal force to overcome Sylvas' resistance and effect his arrest. The officers' and sergeant's actions were appropriate and within Department policies and procedures.

Tactics

- Department policy relative to a Tactical Debrief is: "*The collective review of an incident to identify those areas where actions and decisions were effective and those areas where actions and decisions could have been improved. The intent of a Tactical Debrief is to enhance future performance.*"

Department policy relative to Administrative Disapproval is: "*A finding, supported by a preponderance of the evidence that the tactics employed during a CUOF incident*

²⁴ The information provided in this section summarizes the analysis and findings set forth in the Chief of Police's report for this case. The Chief's report was signed on July 20, 2017.

unjustifiably and substantially deviated from approved Department tactical training” (Los Angeles Police Department Manual, Volume 3, Section 792.05).

The evaluation of tactics requires that consideration be given to the fact that officers are forced to make split-second decisions under very stressful and dynamic circumstances. Tactics are conceptual and intended to be flexible and incident specific, which requires that each incident be looked at objectively and the tactics be evaluated based on the totality of the circumstances.

Tactical De-Escalation

- *Tactical de-escalation involves the use of techniques to reduce the intensity of an encounter with a suspect and enable an officer to have additional options to gain voluntary compliance or mitigate the need to use a higher level of force while maintaining control of the situation.*

Tactical De-Escalation Techniques

- *Planning*
- *Assessment*
- *Time*
- *Redeployment and/or Containment*
- *Other Resources*
- *Lines of Communication (Use of Force - Tactics Directive No. 16, October 2016, Tactical De-Escalation Techniques).*

Tactical de-escalation does not require that an officer compromise his or her safety or increase the risk of physical harm to the public. De-escalation techniques should only be used when it is safe and prudent to do so.

Planning – Officers Nunley and Gelvin, having worked as partners for approximately one year, had a standing plan regarding contact and cover roles, as well as lethal and less-lethal force option designations. Upon his arrival, Sergeant Hurtado considered the exigency of the situation and continued to emphasize planning by assigning officers to provide lethal force cover as well as a variety of less-lethal force options. Sergeant Fuentes assigned officers to an arrest team. Sergeant Hurtado considered requesting MEU and SWAT, but he decided that the exigency of the situation precluded their involvement at the time. While Sergeant Hurtado did not clearly communicate a plan to enter the restaurant and make physical contact with Sylvas after the deployment of less-lethal munitions, the overall planning during this incident assisted in bringing this situation to a successful resolution and it was obvious that the preservation of life was the officers' and sergeants' primary objective.

Assessment – After meeting with PR Martinez and assessing the information given to them, Officer Nunley retrieved the 40mm LLL from the police vehicle in order to

have less-lethal force options available during a potential edged weapon encounter. As they approached the location and prior to contacting Sylvas, Officer Gelvin utilized a "quick-peek" to ascertain Sylvas' exact location within the restaurant and thereby gain a tactical advantage. Prior to making verbal contact with Sylvas, Officers Nunley and Gelvin had assessed the situation and observed that Sylvas did not have any weapons in his hands and were aware that additional units were responding. As Sergeant Hurtado dealt with the ongoing tactical incident, Sergeant Fuentes considered other needs and formulated an arrest team, assigned ancillary duties, designated officers to assist in mitigating pedestrian traffic and ensured that a crime report was taken from the Martinez. During the discharge of multiple less-lethal rounds, Officers Bermudez and Monteagudo assessed after each round that they fired. Officer Bermudez assessed the situation and was specifically cognizant of the danger of a potential ricochet from less lethal rounds to citizens inside the restaurant. Sergeant Hurtado was able to assess that Sylvas was no longer armed with the knife and determined that it was the safest time for the officers to physically detain him. Throughout the incident, including during the use of less-lethal and non-lethal force, the officers and sergeants continuously assessed Sylvas' actions to determine the appropriate course of action.

Time – After making initial verbal contact with Sylvas, Officers Gelvin and Nunley did not approach him and took the time to wait for the arrival of additional resources in an effort to gain a tactical advantage. After assuming the role as the contact officer, Officer Lopez kept Sylvas' attention focused on him instead of the patrons and employees inside the restaurant. This tactic afforded the officers additional time for tactical planning and re-assessments. Upon arrival, Sergeant Hurtado directed the officers to continue communicating with Sylvas, providing Sergeant Hurtado additional time to quickly evaluate the situation, given its exigency, and put together a tactical team and coordinated effort with designated assignments. It was noted that the situation posed a tactically difficult scenario for the responding officers as there was no available cover and the presence of civilians in close proximity to Sylvas, who was armed with a knife, meant that the officers could not gain distance without sacrificing their ability to render timely aid to the citizens.

Redeployment and/or Containment – As Officer Lopez communicated with Sylvas, Sylvas advised the officers he had a gun and reached into his pockets. When Sylvas brandished a knife from his pocket instead of a gun, officers rapidly assessed the situation, did not resort to lethal force and redeployed a few times to increase the distance between Sylvas and themselves, ending approximately 22 feet away from Sylvas. The officers balanced their distance and angle on the location with keeping visual contact with Sylvas in the event the situation escalated further. The location was contained by the officers at the front of the business and the location did not have any rear exits.

Other Resources – Prior to approaching the restaurant, Officer Gelvin verified the response of other resources, including a supervisor and an additional unit and Officer Nunley ensured that they were armed with a 40mm LLL. When Sylvas

armed himself with a knife, Officer Nunley broadcasted a back-up to request additional units. She also requested a ballistic shield due to the officers' lack of cover on the sidewalk. Sergeant Hurtado ensured that a variety of less-lethal force options, including a TASER, 40mm LLL and a Beanbag shotgun were deployed during the incident. While Sergeant Hurtado was occupied with directing the tactical operations, it would have been preferred that Sergeant Fuentes made notifications to SWAT and MEU since she was the second sergeant at the scene. It was noted that Sergeant Fuentes utilized other resources by assigning incoming personnel to pedestrian and traffic control and other ancillary duties, including obtaining additional information from the original victim (Martinez).

Lines of Communication – Throughout the incident, the officers and supervisors utilized lines of communication with each other, Sylvas, the restaurant patrons and Martinez. Officer Nunley initially approached the entrance of the restaurant and requested Sylvas to exit the location in an attempt to gain his compliance and reduce the potential harm to the patrons and employees who were in close proximity to Sylvas. Upon the arrival of additional officers, the officers utilized Officer Lopez, a Spanish-speaking officer, to attempt to open a dialogue with Sylvas. As Sylvas waved the knife in the air and appeared to be making stabbing motions, officers issued multiple Use of Force Warnings to Sylvas ordering him to drop the knife or possibly suffer injury. Sylvas did not comply and although he had refused multiple orders from the officers, the arriving supervisor, Sergeant Hurtado, directed the officers to continue their de-escalation efforts by communicating with Sylvas. This sustained effort kept Sylvas distracted from the patrons nearby and allowed Sergeant Hurtado to assess and cultivate a coordinated tactical plan. Throughout the incident, the officers and sergeants continued to communicate with Sylvas both before and during the use of force.

The UOFRB noted the Mental Health Intervention Training (MHIT) received by the officers at scene and opined that it played a vital role in the encounter with Sylvas. The training was evident in how the officers initially approached the encounter with Sylvas and used varying communication tactics throughout the incident. The Chief concurred with the UOFRB and in examining their communication efforts, it was apparent that the officers and sergeants were continually attempting to de-escalate a tense situation in the hopes of gaining Sylvas' voluntary compliance to submit to a lawful arrest.

- In his analysis of this incident, the Chief identified the following tactical considerations:

Debriefing Point No. 1 - Body Armor (Substantial Deviation – Sergeant Hurtado)

All sworn personnel shall wear Department approved body armor and an authorized police equipment belt when assigned to the field, geographic Area front desk or traffic Division front desk related duties (Los Angeles Police Department Manual, Volume 4, Section 216.52).

Sergeant Hurtado did not don his Department-approved body armor as required when conducting field related duties.

In this case, the UOFRB considered not only the individual safety of Sergeant Hurtado, but also what could have occurred if Sergeant Hurtado were to suffer injuries as a result of not wearing body armor during a volatile incident. The UOFRB opined that in an unfortunate scenario where Sergeant Hurtado incurred injuries, the officers at scene would reasonably divert their attention from the tactical operation in order to render aid to Sergeant Hurtado. Sergeant Hurtado was also the tactical team leader and IC of this critical incident and if critically injured would be unable to perform those functions. In addition to the consideration of his personal safety, Sergeant Hurtado is expected to be an example for his subordinates and comply with the Department's mandated field equipment requirements.

A project was generated through the Office of Operations (OO) after the FID investigation revealed Sergeant Hurtado was not wearing his body armor during the incident. Central Area's command served Sergeant Hurtado with a Notice to Correct Deficiencies (NTCD) and initiated a Supervisory Action Item (SAI) for Sergeant Hurtado (SAI No. 722191). The corrective actions were approved by the Commanding Officer of Operations – Central Bureau (OCB) and the Director of OO. The Chief would have preferred this matter be handled with the initiation of a personnel complaint investigation rather than the issuance of a NTCD.

Moving forward, the Chief of Police (COP) and the Director of the Office of Operations will discuss consistency in corrective action so as not to reduce the COP's discretion in determining the outcomes for involved employees.

The UOFRB determined, and the Chief concurred, that Sergeant Hurtado's decision not to don his body armor while working in a patrol capacity was a substantial deviation, without justification, from Department policy and approved tactical training. The Chief directed that this be topic of discussion during the Tactical Debrief.

Debriefing Point No. 2 - Contact and Cover Roles

Officers must approach every contact with officer safety in mind. Complacency, overconfidence, poor planning, or inappropriate positioning can leave officers vulnerable to attack.

The contact officer is the officer initiating an action who becomes responsible for conducting the contact. The cover officer is the officer responsible for surveillance and control of a suspect in order to free the contact officer to perform a thorough investigation.

NOTE: Officer safety is a primary responsibility of all peace officers at all times. The contact officer should never rely solely on the cover officer for

protection (California Commission on Peace Officer Standards and Training, Learning Domain 21).

Operational success is based on the ability of officers to effectively establish designated roles and communicate during critical incidents. Officers improve overall safety by their ability to recognize an unsafe situation and work collectively to ensure a successful resolution.

In this case, Officer Lopez acted as both the contact officer and the lethal cover officer, also known as Designated Cover Officer (DCO). As the contact officer and the DCO, Officer Lopez was the primary means of communication and the only designated lethal force option available as part of the tactical plan. While this dual assignment is often performed when there are minimal resources at a scene, it is preferable to reassign one of the responsibilities to another officer as soon as practicable, so the officers can focus on a singular task. Therefore, upon the arrival of additional resources, it would have been beneficial for either Sergeant Hurtado or Officer Lopez to re-assign one of Lopez's assigned duties to another officer in order to reduce the multi-tasking required of Officer Lopez.

As a result of being both the contact and cover officer, Officer Lopez was in a position to enter the restaurant first. As he was entering the restaurant, Officer Lopez observed Sylvas attempting to reach for the knife in order to rearm himself. Officer Lopez initiated physical contact with Sylvas using his left hand while still holding his service pistol in his right hand. Officer Lopez recognized he was not supposed to initiate physical contact while unholstered, but felt it was necessary since he was the first to make entry. Because he was closest to Sylvas, Officer Lopez saw a window of opportunity to kick the knife out of Sylvas' reach and wanted to prevent Sylvas from rearming himself, prior to the arrest team making physical contact.

Officer Lopez recognized the unsafe situation of initiating physical contact with Sylvas while armed with his service pistol and corrected his actions by immediately stepping aside to allow the arrest team to take Sylvas into custody. The UOFRB recognized that Officer Lopez was critical of himself and self-corrected his actions.

Based on the totality of the circumstances, the UOFRB determined, and the Chief concurred, that although Officer Lopez deviated from his role as the DCO, he did so to prevent Sylvas from re-arming himself with the knife. Additionally, he entered the restaurant under the direction of Sergeant Hurtado. Officer Lopez's assuming the role of a contact officer, while still in the designated role of a cover officer, was a substantial deviation, with justification, from approved Department tactical training. In an effort to improve future performance, the Chief directed this to be a topic of discussion during the Tactical Debrief.

Additional Tactical Debrief Topics

- **Body Worn Video (BWV) activation** – The investigation revealed that Sergeants Hurtado and Fuentes, along with Officers Monteagudo and Acevedo did not activate their BWV during their Code Three response. Sergeants Hurtado and Fuentes, along with Officer Monteagudo, activated their BWV upon arrival at scene, while Officer Acevedo activated his BWV approximately one minute after being at scene. The aforementioned personnel are reminded of the importance of activating BWV as soon as it is practical and safe to do so when initiating any investigative or enforcement activity involving a member of the public, and while responding Code Three.

During the UOFRB, Captain Spell advised that a thorough review of Sergeants Hurtado and Fuentes' and Officer Monteagudo's work histories had been conducted which revealed there were no prior incidents involving failures to activate BWV. Captain Spell advised that a SAI will be generated for Sergeants Hurtado and Fuentes, along with Officer Monteagudo for this incident. Additionally, a thorough review of Officer Acevedo's work history revealed one prior late activation in April 2019 during a Non-Categorical Use of Force. A SAI was generated for that previous incident, as well as this current incident.

During the UOFRB, Captain Spell advised that these issues were addressed through divisional training and he recommended that the BWV Policy and Procedure be reviewed with the aforementioned personnel during the Tactical Debrief as well. The Commanding Officer of OCB and the Director of OO concurred with this action. As such, the Chief deemed no further action is necessary and directed this to be a topic of discussion during the Tactical Debrief.

- **Required Equipment** – The investigation revealed that Officer Acevedo left his side-handle baton in his police vehicle and that Sergeant Hurtado was not equipped with his Hobble Restraint Device (HRD) at the time of the incident. Both Officer Acevedo and Sergeant Hurtado are reminded of the importance of having their required field equipment on their person to allow for additional tools and force options to de-escalate an incident. During the UOFRB, Captain Spell recommended the subject of "Required Equipment" be reviewed with Officer Acevedo and Sergeant Hurtado during the Tactical Debrief. The Commanding Officer of OCB and the Director of OO concurred with this action. As such, the Chief deemed no further action is necessary and directed this to be a topic of discussion during the Tactical Debrief.
- **Situational Awareness** – The investigation revealed Officers Gelvin and Nunley met and interviewed the PR while standing in the street. Officers Gelvin and Nunley are reminded of the dangers posed by conducting activities on the roadway and when practical, to utilize the sidewalk to ensure the safety of all involved. The Chief directed this to be a topic of discussion during the Tactical Debrief.

- **Non-Conflicting Simultaneous Commands** – The investigation revealed Officers Lopez and Nunley simultaneously ordered Sylvas to drop the knife. Although the commands were non-conflicting, the officers are reminded that simultaneous commands can sometimes lead to confusion and non-compliance. The Chief directed this to be a topic of discussion during the Tactical Debrief.
- **Radio Codes and Procedures** – The investigation revealed that due to the ongoing tactical incident and consideration for maintaining a clear radio frequency, Sergeant Fuentes did not broadcast she was responding Code Three to the incident, nor did she broadcast she was Code Six upon arrival. Sergeant Fuentes is reminded of the Department's requirement to notify CD of Code Three responses and Code Six locations whenever feasible. During the UOFRB, Captain Spell recommended that radio codes and procedures be reviewed with Sergeant Fuentes during the Tactical Debrief. The Commanding Officer of OCB and the Director of OO concurred with this action. As such, the Chief deemed no further action is necessary and directed this to be a topic of discussion during the Tactical Debrief.
- **Tactical Communication** – The investigation revealed that Sergeant Hurtado assumed the responsibilities of an IC through his actions but did not formally declare himself as the IC. As the IC, Sergeant Hurtado did not clearly communicate a plan to enter the restaurant and make physical contact with Sylvas after the deployment of less-lethal munitions. Additionally, Sergeant Hurtado used the incorrect preparatory commands to alert officers of the 40mm LLL being ready to fire.

Sergeant Hurtado is reminded of the importance of effective communication and the usage of correct terminology during a tactical incident to reduce possible confusion and improve operational success. During the UOFRB, Captain Spell recommended that the topic of tactical communication, including the declaration upon assuming the role of the IC and 40mm LLL terminology, be reviewed with Sergeant Hurtado during the Tactical Debrief. The Commanding Officer of OCB and the Director of OO concurred with this action. As such, the Chief deemed no further action is necessary and directed this to be a topic of discussion during the Tactical Debrief.

- **Barricaded Suspects** – Metropolitan Division SWAT was not notified due to the rapidly evolving tactical incident with multiple citizens within reach of Sylvas. It was noted that Sergeant Hurtado was coordinating with officers and was dealing with the immediate tactical operations and Sergeant Fuentes was in a better position to make notifications and request additional resources as the secondary supervisor at scene. In doing so, Sergeant Fuentes would have assisted Sergeant Hurtado, who had assumed command and control over the tactical operation. Sergeant Fuentes is reminded of the importance of making timely notifications to the appropriate entities to enhance the available resources at the scene in order to bring the incident to a successful resolution. During the UOFRB, Captain Spell recommended that making notifications and requesting additional resources be reviewed with Sergeant Fuentes during the Tactical Debrief. The Commanding Officer of OCB and the Director of OO concurred with this action. As such, the Chief deemed no further action is necessary and directed this to be a topic of discussion during the Tactical Debrief.

OO concurred with this action. As such, the Chief deemed no further action is necessary and directed this to be a topic of discussion during the Tactical Debrief.

- **Effective Encounters with Mentally Ill Persons** – The investigation revealed that Sylvas' behavior was consistent with a person suffering from mental illness and/or being under the influence of alcohol or narcotics. As the secondary supervisor at scene, Sergeant Fuentes was in a better position to make notifications and request additional resources to assist Sergeant Hurtado, who had assumed command over the tactical operations. Sergeant Fuentes is reminded of the resources available when encountering persons suffering from mental illness, including contacting the Department's Mental Evaluation Unit (MEU) for guidance. During the UOFRB, Captain Spell recommended making notifications and requesting additional resources be reviewed with Sergeant Fuentes during the Tactical Debrief. The Commanding Officer of OCB and the Director of OO concurred with this action. As such, the Chief deemed no further action is necessary and directed this to be a topic of discussion during the Tactical Debrief.
- **Designated Less-Lethal Duties** – The investigation revealed that Officer Nunley left her position as the designated TASER officer in an attempt to ascertain if there was a rear entrance/exit to the location and had to be directed back to her assignment. Additionally, although Officers Bermudez and Monteagudo were not assigned as part of the arrest team, they slung their beanbag shotgun and 40mm Less-Lethal Launchers and initiated physical contact with Sylvas to take him into custody. Although it is sometimes necessary for officers in designated roles to be flexible and take on other roles, it can create confusion and reduce operational effectiveness, therefore, officers are reminded of the importance of maintaining their designated roles when sufficient resources are available. The Chief directed this to be a topic of discussion during the Tactical Debrief.
- **Basic Firearms Safety Rules** – The investigation revealed that Officer Lopez made physical contact with Sylvas using his left hand while holding his service pistol in his right hand. Officer Lopez allowed the muzzle of his service pistol to momentarily cover his left hand as he initiated physical contact with Sylvas. Officer Lopez is reminded of the importance of the Department's Basic Firearm Safety Rules. During the UOFRB, Captain Spell recommended that Basic Firearms Safety Rules be reviewed with Officer Lopez during the Tactical Debrief. The Commanding Officer of OCB and the Director of OO concurred with this action. As such, the Chief deemed no further action is necessary and directed this to be a topic of discussion during the Tactical Debrief.
- **TASER Manipulations** – The investigation revealed that the laser sight on Officer Nunley's TASER was illuminated, indicating that the TASER's safety was off as Officers Monteagudo and Acevedo took Sylvas into custody. Officer Nunley's BWV captured the laser sight momentarily covering both Officer Monteagudo's back and the back of Officer Acevedo's head. Officer Nunley is reminded of the importance of TASER manipulations and weapons discipline. During the UOFRB, Captain Spell

recommended that TASER manipulations be reviewed with Officer Nunley during the Tactical Debrief. The Commanding Officer of OCB and the Director of OO concurred with this action. As such, the Chief deemed no further action is necessary and directed this to be a topic of discussion during the Tactical Debrief.

- **Requesting a Rescue Ambulance (RA)** – The investigation revealed that despite the anticipated use of less-lethal force options and Sylvas being armed with an edged weapon, Sergeants Hurtado and Fuentes did not have a RA on standby during the tactical incident. While an RA was requested moments after Sylvas was taken into custody, both sergeants are reminded of the importance of reverence for human life and ensuring the timely response of appropriate emergency medical personnel. The Chief directed this to be a topic of discussion during the Tactical Debrief.

Command and Control

- *Command and Control is the use of active leadership to direct others while using available resources to coordinate a response, accomplish tasks and minimize risk. Command uses active leadership to establish order, provide stability and structure, set objectives and create conditions under which the function of control can be achieved with minimal risk. Control implements the plan of action while continuously assessing the situation, making necessary adjustments, managing resources, managing the scope of the incident (containment), and evaluating whether existing Department protocols apply to the incident.*

Command and Control is a process where designated personnel use active leadership to command others while using available resources to accomplish tasks and minimize risk. Active leadership provides clear, concise, and unambiguous communication to develop and implement a plan, direct personnel and manage resources. The senior officer or any person on scene who has gained sufficient situational awareness shall initiate Command and Control and develop a plan of action. Command and Control will provide direction, help manage resources, and make it possible to achieve the desired outcome. Early considerations of PATROL will assist with the Command and Control process (Los Angeles Police Department, Training Bulletin, Volume XLVII Issue 4, July 2018).

Line Supervision – Defined. A supervisor who has the specific responsibility of issuing directions and orders to designated subordinates shall be considered as having the duty of line supervisor and shall be held accountable for achieving conformance with the directions and orders that he/she issues (Los Angeles Police Department Manual, Volume 3, Section 135).

Incident Commander (IC) – In accordance with Department Policy, the IC sets the objectives, the strategy and directs the tactical response. Directing the tactical response means applying tactics appropriate to the strategy, assigning the right

resources and monitoring performance (Supervisor's Field Operations Guide, Volume 2, LAPD Emergency Operations Guide).

Sergeant Hurtado responded to a CD request for a supervisor as part of the Department's Edged Weapons Protocol. Sergeant Hurtado was the first supervisor to arrive at scene and while he did not declare himself as the IC, he assumed the role of an IC through his actions. Sergeant Hurtado received a briefing from Officer Gelvin and inquired if there were other citizens inside the location.

Sergeant Fuentes arrived at the location in response to the back-up request and was the second supervisor at scene. Sergeant Fuentes began to designate lethal and less-lethal force options not realizing that Sergeant Hurtado was already at scene. Sergeant Hurtado advised Sergeant Fuentes that he had tactical control of the incident.

Sergeant Hurtado directed the citizens inside the restaurant to exit with partial compliance. Due to his assessment of the available resources at scene, Sergeant Hurtado broadcasted he had sufficient units at the location. Sergeant Hurtado designated the roles of lethal and less-lethal force options to officers at scene. Sergeant Hurtado verified that Sylvas did not speak Spanish and advised the officers to continue verbalizing with Sylvas. Sergeant Hurtado also verified the type of crime with Officer Gelvin, assessed the situation and requested a Beanbag shotgun from Sergeant Fuentes, who directed Officer Monteagudo to retrieve and deploy the Beanbag shotgun.

Sergeant Fuentes formed an arrest team and advised Sergeant Hurtado of their presence. Sergeant Fuentes noted Officer Gelvin's position behind Officer Lopez, believed a potential cross-fire situation could occur and directed Officer Gelvin to holster his weapon.

When Officer Nunley left her less-lethal assignment to ascertain if there was a rear entrance to the restaurant, Sergeant Fuentes re-directed Officer Nunley back to her designated role (TASER) on the contact team. Sergeant Fuentes took control over ancillary duties, which included the directing of multiple officers to contain the scene and prevent pedestrians from entering a dangerous situation. Sergeant Fuentes also directed Officers Shultz and W. Cowen, Serial No. 41348, Central Patrol Division, to interview the PR (Martinez) and obtain sufficient relevant information to complete a crime report.

Sergeant Hurtado issued multiple Use of Force Warnings prior to directing Officer Bermudez to discharge the 40mm LLL, which was followed by directing Officer Monteagudo to discharge the Beanbag shotgun. After Sylvas dropped the knife, Sergeant Hurtado directed officers to make entry into the location and take Sylvas into custody. Sergeant Hurtado also telephonically notified the watch commander of the use of force. Sergeant Hurtado assisted with the NCUOF investigation by taking

digital photographs of the location, while Sergeant Fuentes assisted with the NCUOF investigation by canvassing and interviewing civilian witnesses in Spanish.

The UOFRB noted, and the Chief concurred, that while Sergeant Hurtado's tactical plan was comprised of many aspects, including open lines of communications with the suspect and officers, and the designation of various force option roles and continuous assessment, they would have preferred that Sergeant Hurtado's plan included a more coordinated approach with detailed and defined roles for the officers that entered the restaurant. Clear and concise instructions provided to his team of officers prior to making physical contact with Sylvas, may have negated or at least mitigated the role confusion experienced by the officers.

Additionally, the UOFRB opined and the Chief concurred, that the situation could have benefitted from enhanced communication between Sergeants Hurtado and Fuentes regarding requests for specialized resources.

Nonetheless, the UOFRB and the Chief concurred that overall, Sergeants Hurtado and Fuentes were faced with a rapidly unfolding and tactically difficult situation that very easily could have escalated further, and it was through their leadership and command and control that the situation was successfully resolved without the use of lethal force. Therefore, the actions of Sergeants Hurtado and Fuentes were consistent with Department supervisory training and met the Chief's overall expectations of field supervisors during a critical incident. In an effort to improve future performance, Sergeants Hurtado and Fuentes will be directed to attend a Tactical Debrief specifically addressing the topic of Command and Control and the Chief's expectations of field supervisors during a critical incident.

Additional supervisors started a NCUOF investigation and completed post CUOF separation and monitoring duties.

Sergeant Ruiz responded to the scene, initiated a NCUOF investigation and responded to the hospital where he learned that Sylvas was likely going to be admitted to the hospital. Sergeant Ruiz made appropriate notifications, which eventually resulted in FID determining that the investigation would be handled as a CUOF. Sergeant Ruiz made the appropriate notifications and FID assumed investigative responsibility of the incident.

Sergeant Castellanos separated and monitored Officers Gelvin and Nunley at Central CPS.

Sergeant Coss separated and monitored Officers Acevedo and Monteagudo at Central CPS.

Sergeant Jheon separated and monitored Officers Bermudez and Lopez at Central CPS.

Sergeant Ospina separated and monitored Sergeant Hurtado at Central CPS.

Note: The FID investigation determined that there were issues identified regarding the documentation of the separation and monitoring of Sergeant's Hurtado and Fuentes. No separate log was located for Sergeant Ospina, who was responsible for the monitoring of Sergeant Hurtado, nor did the Central Area Watch Commander's Daily Report document the chronological progress of the monitoring of Sergeant Hurtado. In addition, the Central Area Watch Commander's Daily Report did not reflect the separation and monitoring of Sergeant Fuentes, nor were any additional logs located that documented Sergeant Fuentes' separation and monitoring.

The actions of Sergeants Ruiz, Castellanos, Coss and Jheon were consistent with Department supervisory training and met the Chief's expectations of field supervisors during a critical incident.

With regard to Sergeant Ospina, the FID investigation revealed he did not document the chronological progress for the separation and monitoring of Sergeant Hurtado on either a Sergeant's Daily Report or the Watch Commander's Daily Report. Sergeant Fuentes was separated and monitored in the Sergeant's Room, but she did not recall the supervisor who was in charge of her monitoring and separation.

The actions of Sergeant Ospina were not consistent with Department supervisory training and did not meet the Chief's expectations of a field supervisor during a critical incident. Captain Spell advised that this issue was addressed through divisional training and an entry was made into the Learning Management System (LMS). The Commanding Officer of OCB and the Director of OO concurred with this action. As such, the Chief deemed no further action is necessary.

Tactical Debrief

- In conducting an objective assessment of this case, the UOFRB determined, and the Chief concurred that Sergeant Hurtado's decision to not wear body armor was a substantial deviation, without justification, from Department policy and training, thus requiring a finding of Administrative Disapproval.

Additionally, in conducting an objective assessment of this case, the UOFRB determined, and the Chief concurred, that Sergeant Fuentes' along with Officers Acevedo, Bermudez, Gelvin, Lopez, Monteagudo and Nunley's tactics did not substantially deviate from approved Department tactical training.

Each tactical incident also merits a comprehensive debriefing. In this case, there were areas identified where improvement could be made. A Tactical Debrief is the appropriate forum for the involved personnel to discuss individual actions that took place during this incident.

Therefore, the Chief directed that Sergeants Hurtado and Fuentes, along with Officers Acevedo, Bermudez, Gelvin, Lopez, Monteagudo and Nunley attend a Tactical Debrief and that the specific identified topics be discussed.

Note: Additionally, the Tactical Debrief shall also include the following mandatory discussion points:

- Use of Force Policy;
- Equipment Required/Maintained;
- Tactical Planning;
- Radio and Tactical Communication (including Code Six);
- Tactical De-Escalation;
- Command and Control; and,
- Lethal Force.

General Training Update (GTU)

- On March 21, 2019, Officers Bermudez and Monteagudo attended a GTU. All mandatory topics were covered.

Drawing/Exhibiting

- Department policy relative to drawing and exhibiting a firearm is: “*An officer’s decision to draw or exhibit a firearm should be based on the tactical situation and the officer’s reasonable belief there is a substantial risk that the situation may escalate to the point where deadly force may be justified*” (*Los Angeles Police Department Manual, Volume No. 1, Section 556.80*).
- **Officer Lopez** – According to Officer Lopez, he advised Sylvas to voluntarily exit the restaurant or officers would enter to take him into custody. Sylvas responded by stating, “I have a gun,” and simultaneously reached towards his right pocket. Believing Sylvas was arming himself with a firearm, Officer Lopez unholstered, and immediately observed that Sylvas was armed with a knife. Officer Lopez remained unholstered with his service pistol in a low-ready position.

Officer Lopez recalled, “*I said, “Hey, you know … you’re going to come out or we’re going to get you out.” And he says, “No, you’re not.” He’s like, “I’m not coming out.” He’s like, “I have a gun.” And he, with his right hand, with his - - both of his hand [sic], he reached towards his - - towards his right pocket, and he simultaneously said, “I have a gun.” And at that point, I placed my hand on my weapon and I unholstered, and immediately observed that it was actually a knife. And I maintained unholstered in a low-ready position*”.²⁵

²⁵ Officer Lopez, Page 19, Line 3 and Lines 5-15.

- **Officer Gelvin** – According to Officer Gelvin, while officers were communicating with Sylvas and ordering him to exit the restaurant, Sylvas advised the officers that he had a gun and swiftly reached into his pockets. Officer Gelvin heard another officer at scene order Sylvas not to reach for the weapon. Officer Gelvin drew out his service pistol in the direction of the Sylvas in preparation to confront Sylvas who may have been armed with a gun or another weapon. Officer Gelvin also believed that the situation could possibly escalate to lethal force. Officer Gelvin observed that Sylvas came out with a knife from his pocket, so Officer Gelvin transitioned to a low-ready position.

Officer Gelvin recalled, “So while we were talking to him, at some point when he’s -- when we’re trying to get him to come outside and talk to us, he -- he basically said that he had a gun. And he reached into his pockets pretty -- pretty swiftly. And one of the other officers at scene, I think it was either Bermudez or his partner, said something to the effect of like, “Oh, you got a gun? Don’t reach in your -- don’t reach in and get it,” or something like that. At that point, I -- I drew out and was pointing my gun at the suspect.”²⁶

“It was my belief at the time that he might pull a gun out of his jacket or another weapon that would need to be addressed by what could possibly escalate to lethal force.”²⁷

“When he came out with his pocket, I checked out what he actually came out with, and it was a knife. At that point, I think I said that he -- he had a knife to the other officers at scene, and I went down to a low-ready.”²⁸

- **Officer Monteagudo** – According to Officer Monteagudo, due to the nature of the radio call, he believed that the situation may escalate to the point where deadly force is justified and drew his service pistol. The radio call was a “415 man armed with a knife threatening the PR.” Officer Monteagudo was also responding to a backup and observed another officer unholstered.

Officer Monteagudo recalled, “The reason I unholstered was the nature of the call that I was responding to. So, it was a 415 man armed with a knife threatening the PR. That, plus, additionally too, the other officers at scene requesting a backup, which obviously means the situation is going sideways. And when I get on scene, I see the officer’s [sic] unholstered, so that leads me to believe that the situation may escalate to the point where deadly force is justified.”²⁹

²⁶ Officer Gelvin, Page 9, Lines 9-19.

²⁷ Officer Gelvin, Page 28, Lines 23-25, and Page 29, Line 1.

²⁸ Officer Gelvin, Page 9, Lines 20-23.

²⁹ Officer Monteagudo, Page 47, Lines 6-15.

In this case, the UOFRB conducted a thorough review in evaluating the reasonableness of Officers Lopez, Gelvin, and Monteagudo's Drawing/Exhibiting. The UOFRB noted that the officers responded to a radio call with comments indicating the suspect was armed with a knife. Upon the officers' contact with the suspect, the suspect armed himself with a knife and this was communicated to the officers at scene.

Based on the totality of the circumstances, the UOFRB determined, and the Chief concurred, that an officer with similar training and experience as Officers Lopez, Gelvin and Monteagudo, while faced with similar circumstances, would reasonably believe that there was a substantial risk this situation may escalate to the point where deadly force may be justified.

Therefore, the Chief found Officers Lopez, Gelvin and Monteagudo's Drawing/Exhibiting to be In-Policy, No Further Action.

Use of Force – General

- *It is the policy of this Department that personnel may use only that force which is "objectively reasonable" to:*
 - *Defend themselves;*
 - *Defend others;*
 - *Effect an arrest or detention;*
 - *Prevent escape; or,*
 - *Overcome resistance*

The Department examines reasonableness using Graham v. Connor and from the articulated facts from the perspective of a Los Angeles Police Officer with similar training and experience placed in generally the same set of circumstances. In determining the appropriate level of force, officers shall evaluate each situation in light of facts and circumstances of each particular case. Those factors may include, but are not limited to:

- *The seriousness of the crime or suspected offense;*
- *The level of threat or resistance presented by the subject;*
- *Whether the subject was posing an immediate threat to officers or a danger to the community;*
- *The potential for injury to citizens, officers or subjects;*
- *The risk or apparent attempt by the subject to escape;*
- *The conduct of the subject being confronted (as reasonably perceived by the officer at the time);*
- *The amount of time and any changing circumstances during which the officer had to determine the type and amount of force that appeared to be reasonable;*
- *The availability of other resources;*
- *The training and experience of the officer;*
- *The proximity or access of weapons to the subject;*

- *Officer versus subject factors such as age, size, relative strength, skill level, injury/exhaustion and number officers versus subjects; and,*
- *The environmental factors and/or other exigent circumstances. (Los Angeles Police Department Manual, Volume 1, Section 556.10).*

Non-Lethal Use of Force³⁰

- *It is the policy of this Department that personnel may use only that force which is “objectively reasonable” to:*
 - *Defend themselves;*
 - *Defend others;*
 - *Effect an arrest or detention;*
 - *Prevent escape; or,*
 - *Overcome resistance (Los Angeles Police Department Manual, Volume 1, Section 556.10).*
- **Officer Lopez – Firm Grip**

According to Officer Lopez, he observed that Sylvas dropped the knife and subsequently was the first to make entry into the restaurant at the direction of Sergeant Hurtado. Officer Lopez had a clear shot to kick the knife away to prevent Sylvas from re-arming himself and grabbed Sylvas' right hand, using his left hand. Officer Lopez maintained his service pistol in his right hand and while doing so, was unable to reach the knife. Officer Lopez then moved out of the way for the arrest team to grab a hold of Sylvas.

Officer Lopez recalled, “So I saw that he dropped the knife. I stepped forward. That's when I relayed the information that, “Hey, the knife's [sic] on the floor, the knife's [sic] on the floor.” I initially made entry. I grabbed his left hand, or his right hand with my left, and I tried to kick the knife out of the way. I wanted to move out of the way initially while seeing how I was -- I had a clear shot to kick the knife away. I was unable to, and I tried to move out of the way for the arrest team to get -- grab a hold of him.³¹

- **Officer Bermudez – Physical Force**

According to Officer Bermudez, after Sylvas dropped the knife on the floor and the officers were making entry into the location, he observed Sylvas attempting to reach for the knife. In order to create distance between Sylvas and the knife, Officer Bermudez pushed Sylvas on his right shoulder area.

³⁰ Los Angeles Police Department Manual, Volume 1, Section 556.10.

³¹ Officer Lopez, Page 15, Lines 7-17.

Officer Bermudez recalled, “I remember hearing that the suspect had dropped a knife. And we -- I remember hearing, “Go, go, go.” I remember seeing my partner, Officer Lopez, be the first one to make entry. I’m not sure if it was Monteagudo or Acevedo who ended up making entry second, but then I sling my -- my 40, and I made entry. And I saw that the suspect was attempting to reach the knife that he had dropped. So, he kind of started going towards it. And I remember trying to push him away to create distance from the knife and himself”³²

“I grabbed his -- I believe it was his right side, his right arm, I kind of push him away like that. Just kind of like his shoulder, I guess, kind of try to push him away because I know that I was assigned to the 40, so I wasn’t supposed to go hands on, but sees [sic] how he’s still trying to go for the knife, I figured, you know, I’d try to create a distance and wait for the officers who were assigned to the contact team to take him into custody.”³³

- **Officer Acevedo – Take Down, Physical Force, Wrist Lock**

According to Officer Acevedo, in order to prevent Sylvas from re-arming himself with the knife, effect the arrest and take Sylvas into custody with no further incident, Officer Acevedo grabbed Sylvas left arm with his left hand and swept him down to the ground. After the takedown, Sylvas’ right hand was concealed underneath his body. Officer Acevedo reached under Sylvas’ body and pulled out Sylvas’ right hand using his left hand.

Officer Acevedo recalled, “And I could visually see that the knife was on the ground. It was on his left hand side, like on the ground. So therefore, I follow through after Officer Lopez and Officer Monteagudo walked into -- into the room. And my main focus was on the suspect’s hands. I was not able to see any weapons on him, so I wanted to make sure that we could effect the arrest and then take him into custody with no further incident. And that point, or at that point, I actually was trying to get him away from the knife, which the knife was on his left hand side, or left hand side of his body on the ground. So, I made sure that I grabbed his -- his left arm with my left hand and swept him down to the ground towards the right side of -- of the location. And I kept full control of his -- his right arm. He did have his -- he had his right hand under his body.”³⁴

“I was holding onto his ... right elbow, although his -- I could not see his -- his hand, I was able to still keep control of his right elbow, so then I was -- I started pulling -- I reached under his body and pulled out his hand, in which case, I was able to

³² Officer Bermudez, Page 15, Lines 4-15.

³³ Officer Bermudez, Page 39, Lines 16-25, and Page 40, Line 1.

³⁴ Officer Acevedo, Page 8, Line 25, and Page 9, Lines 1-15.

*successfully have a full control of it ... And my left, I used my left hand to grab his -- his actual hand, his right hand.*³⁵

Note: A review of Officer Acevedo's BWV revealed that he applied a wrist lock to Sylvas' right hand to facilitate the handcuffing. Additionally, Officer Acevedo's BWV captured him using his right and left hands to pull at the right sleeve of Sylvas' sweatshirt, which in turn pulled Sylvas' right hand out from underneath his body.

- **Officer Monteagudo – Takedown, Body Weight, Wrist Lock**

According to Officer Monteagudo, after entering the location to effect an arrest on Sylvas, he grabbed Sylvas' left wrist with his left hand. Officer Monteagudo then used his right hand to place a C grip on Sylvas' elbow and walked Sylvas down to the ground.

Officer Monteagudo recalled, “*the contact officer entered the building. Due to myself and the 40 being in direct front of the door, Sergeant Hurtado just told us, “Go in, go in, go in,” which at that point, we just rushed in because the suspect had dropped the knife and we were -- did not want him to arm himself again. Once I sling my -- my beanbag, I grabbed suspect’s left hand, and we walked the suspect down to the ground.*³⁶

*“So, I had the -- with my left hand, I had the suspect’s left wrist. And then with my right hand, I had a C grip on the shoulders [sic] elbow.”*³⁷

According to Officer Monteagudo, after Officers Bermudez and Acevedo took Sylvas to the ground, he placed his right knee on Sylvas' lower back to assist the officers with controlling him. Officer Monteagudo then applied a finger flex on Sylvas' hand to bring Sylvas' arm behind his back and facilitate the handcuffing.

Officer Monteagudo recalled, “*Well, he was already kind of flopping over to the ground, so we just kind of guide him more -- for us, we have more space to work, as in to put his hands behind his back. I started to do like a felony prone where I put my knee into his side, put my right knee into his side or his lower back. And then my left knee over his shoulder blades.*³⁸

³⁵ Officer Acevedo, Page 32, Lines 6-12 and 15-17.

³⁶ Officer Monteagudo, Page 12, Lines 7-12 and 16-18.

³⁷ Officer Monteagudo, Page 40, Lines 8-10.

³⁸ Officer Monteagudo, Page 41, Lines 16-22.

*"I do a finger flex with my right hand. Bringing the suspect's hand, or arm behind his back. And I believe my -- my partner, Nunley, puts the cuffs on the suspect."*³⁹

Note: A review of Officer Nunley's BWV revealed that Officer Monteagudo applied a wrist lock to Sylvas' left hand.

- **Officer Nunley – Firm Grip**

According to Officer Nunley, two officers were holding Sylvas' arms. Officer Nunley approached Sylvas from behind and straddled him. Without placing any bodyweight on Sylvas, Officer Nunley grabbed his right arm and placed the handcuffs on him.

Officer Nunley recalled, "*That's when two officers -- I don't recall who -- were holding his arms. I approached him -- the suspect from the rear -- from the back, and I straddled him. I stood with -- I stood with my left foot between his two feet and my right foot was on the outside of his foot. I didn't have my body weight on him, but I just -- I only grabbed his -- I grabbed the hand and then I put -- I placed handcuffs on as the officers were passing me his hands.*"⁴⁰

*"I handcuffed the right hand first and then I handcuffed the left hand ... I grabbed his right arm in order to move it closer so that I could put the cuff on."*⁴¹

The UOFRB reviewed each application of non-lethal force by the involved officers in this case and determined that the force used by the officers was reasonable based on Sylvas' physical resistance. Sylvas did not comply with officers' lawful orders to submit to arrest and escalated the incident further when he attempted to re-arm himself with the knife. Throughout the incident, officers issued multiple commands to de-escalate the situation, but were forced to use non-lethal force to take Sylvas into custody and bring the incident to a successful resolution.

Based on the totality of the circumstances, the UOFRB determined, and the Chief concurred, that an officer with similar training and experience as Officers Acevedo, Bermudez, Lopez, Monteagudo and Nunley, while faced with similar circumstances, would believe that the same applications of non-lethal force would be reasonable to overcome Sylvas' resistance and effect his arrest.

Therefore, the Chief found Officers Acevedo, Bermudez, Lopez, Monteagudo and Nunley's Non-Lethal Use of Force to be objectively reasonable and In Policy, No Further Action.

³⁹ Officer Monteagudo, Page 42, Lines 19-22.

⁴⁰ Officer Nunley, Page 11, Lines 14-22.

⁴¹ Officer Nunley, Page 49, Lines 15-16 and 22-24.

Less-Lethal Use of Force

It is the policy of this Department that personnel may use only that force which is “objectively reasonable” to:

- *Defend themselves;*
- *Defend others;*
- *Effect an arrest or detention;*
- *Prevent escape; or,*
- *Overcome resistance (Los Angeles Police Department Manual, Volume 1, Section 556.10).*

Whenever practicable, officers shall exercise de-escalation techniques to resolve potential use of force incidents and seek voluntary compliance from suspects/subjects.

The courts have held that Less-Lethal force options are “capable of inflicting significant pain and may cause serious injury.” Therefore, consistent with the Department’s Use of Force Policy, Less-Lethal force options are only permissible when:

- *An officer reasonably believes the suspect or subject is violently resisting arrest or poses an immediate threat of violence or physical harm.*

Less-Lethal force options shall not be used for a suspect or subject who is passively resisting or merely failing to comply with commands. Verbal threats of violence or mere non-compliance by a suspect do not alone justify the use of Less-Lethal force.

An officer may use the Beanbag Shotgun as a reasonable force option to control a suspect when the suspect poses an immediate threat to the safety of the officer or others.

For tactical and weapon retention purposes, the recommended deployment range for the Beanbag Shotgun is five feet to 45 feet (Los Angeles Police Department Use of Force Tactics Directive No. 6.3, Beanbag Shotgun – July 2018).

An officer may use the 40mm Less Lethal Launcher as a reasonable force option to control a suspect when the suspect poses an immediate threat to the safety of the officer or others.

The minimum recommended deployment range for the 40mm Less Lethal Launcher is five feet, while the effective deployment range is up to 110 feet (Los Angeles Police Department Use of Force Tactics Directive No. 17,40mm Less-Lethal Launcher – July 2018).

- **Officer Bermudez – 40mm Less-Lethal Launcher**

First Discharge – (1) 40mm eXact iMpact round from a distance of approximately 22 feet aimed at Sylvas' right hand.

According to Officer Bermudez, with citizens inside the location and Sylvas' continuous movement while actively waving his hand up and down with the knife, Officer Bermudez fired one round from the 40mm Less-Lethal Launcher at Sylvas' right hand to stop the immediate threat of violence.

Officer Bermudez recalled, “*...seeing how the suspect was actively waving his hand up and down with the knife, continuously moving, I didn't feel like I had a clear shot of the shoulder based on the -- on the glass that was behind him ... And I told them that the 40 is pretty accurate, and I feel like I have a better shot at aiming for his hand.*”⁴²

*“I felt that if I strike the hand, there's a possibility that I could demobilize his hand and -- and having him drop the knife, and then preventing him from using it. He was -- he was still armed with people inside the location and shielded.”*⁴³

*“When he [referring to Sergeant Hurtado] gave me the go ahead, I went ahead and deployed the 40. I struck him in the right hand. I saw that the suspect was still holding the knife in his hand.”*⁴⁴

Note: The FID investigation determined that Sergeant Hurtado was the supervisor providing direction to Officer Bermudez regarding the 40mm.

Second Discharge – (1) 40mm eXact iMpact round from a distance of approximately 22 feet aimed at Sylvas' right hand.

According to Officer Bermudez, Sylvas continued to be armed with a knife as well as a chair. Sylvas continued shouting and violently resisting while posing a threat to the citizens inside the location, as well as to the officers standing on the sidewalk. Sylvas started waving the knife in bigger motions while refusing to comply with the officers' orders. Officer Bermudez fired a second round from the 40mm Less-Lethal Launcher at Sylvas' right hand to stop the immediate threat of violence.

Officer Bermudez recalled, “*After I reassessed and reloaded, I noticed that he was still armed with a knife ... he was still violently resisting. He was -- he still posed a threat to the bystanders, people inside the location, and the officers ... he was still shouting. He was still armed with a chair. He was still refusing to comply to our*

⁴² Officer Bermudez, Page 13, Lines 9-16 and 24-25.

⁴³ Officer Bermudez, Page 31, Lines 18-21 and 24-25, and Page 32, Line 1.

⁴⁴ Officer Bermudez, Page 14, Lines 2-5.

*orders, and he was still armed with a knife waving it up and down ... if anything, he got a little bit more irritated and he started waving it a little bit, you know, bigger motions ... Like more up and down.*⁴⁵

*"And I waited for him to lower the knife, because he was still waving it up and down. I waited for him to lower his hand down so it's an easier target, because if it's high, it could hit the glass, or it could easily ricochet and hit someone else inside the location. So, I struck him a second time in the hand."*⁴⁶

Third Discharge – (1) 40mm eXact iMpact round from a distance of approximately 22 feet aimed at Sylvas' right leg.

According to Officer Bermudez, Sylvas, while still armed with the knife, started to make threats against the officers stating, "I'm going to kill you." As Sylvas continued to resist and pose a threat to the citizens and officers, Sylvas raised the chair higher, exposing his legs. Sergeant Hurtado ordered Officer Bermudez to take the shot. Officer Bermudez fired a third round from his 40mm LLL aimed at Sylvas' right leg to stop the immediate threat of violence. Officer Bermudez believed he struck Sylvas' outer right leg, but Sylvas still did not drop the knife.

Officer Bermudez recalled, "*I noticed that he started bleeding. I remembered stating ... that he was injured. At some point, the suspect is still -- he was making several threats. I'm not sure if he was talking to myself or to my partner or who -- which officer he was talking to, but at some point, he had said, "I'm going to kill you."*⁴⁷

*"... he was still resisting, and he was still armed, and he still posed a threat to the bystanders and the officers."*⁴⁸

*"I reloaded, reassessed, and I saw that once he was starting to get injured, he was raising the chair a little bit higher, so I had a better shot of the leg. So, I remember stating, I was like, "Hey, there -- there's opening on the legs." I was told to go ahead and take the shot. I shot him in the leg."*⁴⁹

*"I believe it was the right leg".*⁵⁰

⁴⁵ Officer Bermudez, Page 32, Lines 12-13, and Page 33, Lines 4-6, 12-18 and 21.

⁴⁶ Officer Bermudez, Page 14, Lines 6-12.

⁴⁷ Officer Bermudez, Page 14, Lines 13-19.

⁴⁸ Officer Bermudez, Page 35, Lines 7-9.

⁴⁹ Officer Bermudez, Page 14, Lines 20-25, and Page 15, Lines 1-2.

⁵⁰ Officer Bermudez, Page 34, Line 10.

Officer Monteagudo – Beanbag shotgun

First Discharge – (1) Super-sock round from a distance of approximately 22 feet aimed at Sylvas' upper right arm.

According to Officer Monteagudo, due to the close quarters within the restaurant, Sylvas was armed with a knife and had immediate access to multiple victims that were in close proximity to him. Officer Monteagudo noted Sylvas' erratic behavior and the ineffectiveness of the 40mm LLL. To prevent Sylvas from attacking the citizens inside the location and negate a possible hostage situation, Officer Monteagudo fired a Super-sock round from his Beanbag shotgun at Sylvas' upper right arm to stop the immediate threat of violence.

Officer Monteagudo recalled, “*Due to the close quarters where the suspect was at, he was erratic, non-compliant, armed with a knife, and then he had two victims close proximity to him.*”⁵¹

*“That’s -- the reason for using the less lethal was just because we have the -- the patrons inside the restaurant … they’re at great risk of being harmed … the longer the scenario goes on.”*⁵²

*“And then due to the suspect’s close proximity to the other subjects inside the building, it was either use a 40, or the beanbag and have him drop the knife, or we risk the chances of him actually getting off from where he’s sitting and attacking one of the subjects in the building or having a possible hostage situation.”*⁵³

*“Sergeant Hurtado then gave the clear for the 40 to engage. The 40 shot three rounds. They were not effective. The suspect was still armed with a knife and refused to comply. At that point, Sergeant Hurtado gave me the clear to engage with the beanbag, in which I aimed for the suspect’s upper right arm. It’s the only shot that I had available due to the suspect having a chair as a shield. So, once he lowered a little bit, while he’s moving around, I was able to shoot him in the upper right arm.”*⁵⁴

Second Discharge – (1) Super-sock round from a distance of approximately 22 feet aimed at Sylvas' right thigh.

According to Officer Monteagudo, Sylvas continued to wave the knife, while holding it in an overhand stabbing position, and started to scream even louder. Additionally,

⁵¹ Officer Monteagudo, Page 11, Lines 13-16.

⁵² Officer Monteagudo, Page 58, Lines 12-16 and 18-19.

⁵³ Officer Monteagudo, Page 35, Lines 11-17.

⁵⁴ Officer Monteagudo, Page 11, Lines 16-25, and Page 12, Lines 1-2.

Sylvas used the chair to cover himself, bracing for another impact. At that point, Officer Monteagudo fired a second Super-sock round from his Beanbag shotgun at Sylvas' right thigh to stop the immediate threat of violence.

Officer Monteagudo recalled, "*When I discharged the first rounds [sic], he starts screaming even louder. And then he uses his chair to cover up himself as bracing for another impact, while still having -- waving the knife in his hands, which at that time, I just immediately, I saw him still having the knife in his hand. He refused to drop it.*"⁵⁵

*"So, he had the blade facing downward. He had it by the handle as in a -- as if he would overhand stab someone, in that kind of sense. He was waving it back and forth, side to side after I shot him the first round."*⁵⁶

*"At that point, I shot another round to the suspect's right thigh, which at that point, he -- he dropped the knife."*⁵⁷

The UOFRB reviewed each application of less-lethal force by Officer Bermudez and Monteagudo and determined that the force used was reasonable based on Sylvas' violent actions toward Martinez and the violent threat posed to the citizens inside the restaurant, as well as to the officers at the scene. Sylvas had uttered criminal threats directed towards Martinez and told officers that he was going to kill them as he made stabbing motions with a knife.

The UOFRB noted that Officers Bermudez and Monteagudo conducted individual and distinct assessments between each discharge of less-lethal munitions, to determine the effectiveness and necessity of each round. These assessments also allowed for precision shots on specific target areas. Furthermore, the UOFRB opined that it was beneficial to have multiple less-lethal force options available and that the use of these devices was a major factor in the safe and successful resolution of this incident.

Based on the totality of the circumstances, the UOFRB determined, and the Chief concurred, that an officer with similar training and experience as Officers Bermudez and Monteagudo, would believe that Sylvas posed a threat of violence, and while faced with similar circumstances, would believe that the same applications of less-lethal force was reasonable to protect themselves and others, as well as to effect Sylvas' arrest.

Therefore, the Chief found Officers Bermudez's and Monteagudo's Less-Lethal Use of Force to be objectively reasonable and In Policy, No Further Action.

⁵⁵ Officer Monteagudo, Page 36, Lines 2-8.

⁵⁶ Officer Monteagudo, Page 36, Lines 15-19.

⁵⁷ Officer Monteagudo, Page 12, Lines 4-6.

Additional/Required Equipment

- **Use of Profanity** – The investigation revealed that Sergeant Hurtado used profanity during the tactical incident. According to Sergeant Hurtado, the statement was not directed towards the suspect, citizens, nor officers, but rather made out of frustration to himself. Captain Spell advised that this issue was addressed through an informal meeting and counseling. In addition, a SAI was generated regarding this issue. The Commanding Officer of OCB and the Director of OO concurred with this action. As such, the Chief deemed no further action is necessary.
- **Personal Protective Equipment** – The investigation revealed that Officers Lopez, Bermudez and Monteagudo were not assigned to the arrest team and as such, were not wearing protective gloves during their physical contact with Sylvas, who was bleeding at the time. Officers are reminded of the importance of utilizing personal protective equipment to prevent exposure to blood and other bodily fluids. Captain Spell advised that this issue was addressed through an informal meeting and counseling. The Commanding Officer of OCB and the Director of OO concurred with this action. As such, the Chief deemed no further action is necessary.

Audio/Video Recordings

- **Digital In-Car Video System (DICVS)/ Body Worn Video (BWV)** – Central Patrol Division vehicles were equipped with DICVS. Officers Nunley and Gelvin DICVS captured a partial view of the Less-Lethal use of force. Sergeant Hurtado, along with Officers Bermudez, Lopez, Monteagudo and Acevedo's DICVS captured the audio of the discharges of less-lethal munitions and the audio of officers speaking to Sylvas and amongst themselves.

Central Patrol Division personnel were equipped with BWV at the time of the incident. Sergeants Hurtado and Fuentes, along with Officers Bermudez, Monteagudo, Gelvin and Nunley's BWVs captured the Less-Lethal use of force. Officer Lopez's BWV captured the Non-Lethal use of force. Officer Acevedo's BWV captured the Less-Lethal and Non-Lethal uses of force.

- **Outside Video** – Technical Investigation Division (TID) downloaded surveillance footage from 310 West Fifth Street and 312 West Fifth Street. The footage from 310 West Fifth Street captured the interaction between Sylvas and Martinez, the use of force and Sylvas being taken into custody. The footage from 312 West Fifth Street captured the discharge of less-lethal munitions, Sylvas being escorted out of the location and the arrival of LAFD personnel.

Witness Rodriguez supplied FID detectives with three cellular phone videos, which captured Sylvas threatening officers, Sylvas being struck by less-lethal munitions and a part of Sylvas being taken into custody.

Witness N. Madrid supplied FID detectives with two cellular phone videos, which captured the commands given to Sylvas and the discharge of less-lethal munitions.

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INSPECTOR GENERAL REVIEW

Inspector General Analysis

Investigation Quality

- No significant issues of concern were identified in relation to investigation quality.

Training Issues

- No significant issues of concern were identified in relation to training.

Equipment Issues

- No significant issues of concern were identified in relation to equipment.

Detention

- The OIG concurs with the Chief's analysis.

Tactical De-escalation

- The OIG concurs with the Chief's analysis.

Additional

- As reported by FID, Sergeant Hurtado participated in the Non-Categorical Use of Force (NCUOF) investigation that was initiated prior to this incident being classified as a Categorical Use of Force.

Department policy regarding the investigation of NCUOFs includes the following language:

Generally, a supervisor who witnessed a Non-Categorical use of force incident should not conduct a use of force investigation. However, the watch commander may make exceptions on a case-by-case basis, based on exceptional operational needs. The watch commander shall document the exceptional operational need in the Non-Categorical Use of Force Internal Process Report (IPR). Under no circumstances shall a supervisor involved in a use of force incident be permitted to conduct the investigation.

Note: An involved supervisor is defined as a supervisor who provided guidance or direction during the use of force, or participated in on-scene pre-planning or directing related to the incident. A supervisor who participated in or witnessed the use of force, planned the event, or was present at a forced blood withdrawal from a suspect shall not investigate the incident.⁵⁸

⁵⁸ Los Angeles Police Department Manual, Volume 4, Section 245.10.

As an involved supervisor, Sergeant Hurtado should not have participated in the investigation of this incident. The OIG recommends that this matter be addressed with Sergeant Hurtado.

Inspector General Recommendations

Tactics

- The OIG concurs with the Chief's findings.

Drawing/Exhibiting

- The OIG concurs with the Chief's findings.

Non-Lethal Use of Force

- The OIG concurs with the Chief's findings.

Less-Lethal Use of Force

- The OIG concurs with the Chief's findings.



MARK P. SMITH
Inspector General